Brought from the Lords, 16 *June* 1853.

FIRST REPORT

FROM THE

SELECT COMMITTEE OF THE HOUSE OF LORDS,

APPOINTED TO INQUIRE INTO

The Operation of the Act 3 & 4 Will. 4, c. 85, for the better Government of Her Majesty's INDIAN TERRITORIES; and to report their Observations thereon to The House; and to whom leave was given to report from time to time to The House; and to whom were referred several Petitions, Papers and Documents, relative to the subject-matter of the Inquiry;

TOGETHER WITH THE

MINUTES OF EVIDENCE,

AND APPENDIX.

Session 1852–3.

Ordered, by The House of Commons, *to be Printed,*
16 *June* 1853.

REPORT - - - - - - - - - p. vii

MINUTES OF EVIDENCE - - - - - - - p. 3

APPENDIX - - - - - - - - - p. 659

REPORT - - - - - - - - - p. vii

MINUTES OF EVIDENCE - - - - - - - p. 3

APPENDIX - - - - - - - - - p. 659

NAMES OF THE LORDS PRESENT AT EACH SITTING OF THE COMMITTEE.

Die Veneris, 19° *Novembris* 1852.

The Lord Privy Seal.
Marquess of Tweeddale.
The Lord Steward.
Earl of Albemarle.
Earl of Powis.
Viscount Canning.
Viscount Gough.
Lord Bishop of Oxford.
Lord Colville of Culross.
Lord Wodehouse.
Lord Colchester.
Lord Somerhill.
Lord Ashburton.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

Die Martis, 23° *Novembris* 1852.

The Lord Privy Seal.
Marquess of Tweeddale.
Earl of Albemarle.
Earl of Ellenborough.
Viscount Gough.
Lord Bishop of Oxford.
Lord Elphinstone.
Lord Sundridge.
Lord Wodehouse.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Panmure.
Lord Ashburton.
Lord Stanley of Alderley.
Lord Broughton.
Viscount Canning.

Die Jovis, 25° *Novembris* 1852.

The Lord Privy Seal.
Earl Granville.
Earl of Ellenborough.
Viscount Canning.
Viscount Gough.
Lord Bishop of Oxford.
Lord Elphinstone.
Lord Colville of Culross.
Lord Wodehouse.
Lord Colchester.
Lord Wharncliffe.
Lord Ashburton.
Lord Stanley of Alderley.

Die Martis, 30° *Novembris* 1852.

The Lord Privy Seal.
The Lord Steward.
Earl of Albemarle.
Earl of Powis.
Earl Granville.
Earl of Ellenborough.
Viscount Canning.
Viscount Gough.
Lord Bishop of Oxford.
Lord Elphinstone.
Lord Wodehouse.
Lord Colchester.
Lord Wharncliffe.
Lord Ashburton.

Die Jovis, 2° *Decembris* 1852.

The Lord Privy Seal.
Marquess of Tweeddale.
The Lord Steward.
Earl Granville.
Earl of Ellenborough.
Viscount Canning.
Viscount Gough.
Lord Elphinstone.
Lord Colville of Culross.
Lord Colchester.
Lord Wharncliffe.

Die Veneris, 3° *Decembris* 1852.

The Lord Privy Seal.
Marquess of Tweeddale.
Earl of Albemarle.
Earl Granville.
Viscount Canning.
Lord Elphinstone.
Lord Wodehouse.
Lord Colchester.
Lord Ashburton.
Lord Monteagle of Brandon.

NAMES OF THE LORDS PRESENT AT EACH SITTING OF THE COMMITTEE—*continued.*

Die Jovis, 9° *Decembris* 1852.

The Lord Privy Seal.
The Lord Steward.
Earl Granville.
Viscount Gough.
Lord Elphinstone.
Lord Colchester.

Die Martis, 1° *Martii* 1853.

The Lord President.
Marquess of Salisbury.
Earl Graham.
Earl of Harrowby.
Earl of Ellenborough.
Viscount Canning.
Lord Elphinstone.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Glenelg.
Lord Monteagle of Brandon.
Lord Broughton.

Die Jovis, 3° *Martii* 1853.

The Lord President.
Marquess of Salisbury.
Earl of Albemarle.
Earl of Powis.
Earl of Harrowby.
Earl of Ellenborough.
Lord Colchester.
Lord Wynford.
Lord Stanley of Alderley.
Lord Broughton.

Die Martis, 8° *Martii* 1853.

The Lord President.
Marquess of Salisbury.
Earl of Albemarle.
Earl Graham.
Earl Powis.
Earl of Ellenborough.
Viscount Canning.
Viscount Hardinge.
Viscount Gough.
Lord Elphinstone.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Ashburton.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

Die Jovis, 10° *Martii* 1853.

The Lord President.
Marquess of Tweeddale.
Earl Graham.
Earl of Powis.
Earl of Ellenborough.
Viscount Canning.
Viscount Gough.
Lord Elphinstone.
Lord Colville of Culross.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Ashburton.
Lord Glenelg.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

Die Martis, 15° *Martii* 1853.

The Lord President.
The Lord Privy Seal.
Marquess of Tweeddale.
Marquess of Salisbury.
Earl of Albemarle.
Earl of Harrowby.
Earl of Ellenborough.
Viscount Hardinge.
Viscount Gough.
Lord Elphinstone.
Lord Colville of Culross.
Lord Colchester.
Lord Somerhill.
Lord Wharncliffe.
Lord Wynford.
Lord Ashburton.
Lord Monteagle of Brandon.
Lord Broughton.

Die Jovis, 17° *Martii* 1853.

The Lord President.
The Lord Privy Seal.
Marquess of Tweeddale.
Marquess of Salisbury.
Earl of Albemarle.
Earl Graham.
Earl of Harrowby.
Earl of Ellenborough.
Viscount Gough.
Lord Elphinstone.
Lord Mont Eagle.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Glenelg.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

NAMES OF THE LORDS PRESENT AT EACH SITTING OF THE COMMITTEE—*continued.*

Die Veneris, 18° *Martii* 1853.

The Lord President.
The Lord Privy Seal.
Earl Graham.
Earl of Harrowby.
Earl of Ellenborough.
Viscount Gough.
Lord Elphinstone.
Lord Mont Eagle.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Glenelg.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

Die Martis, 5° *Aprilis* 1853.

The Lord President.
The Lord Privy Seal.
Earl of Albemarle.
Earl of Ellenborough.
Lord Elphinstone.
Lord Colville of Culross.
Lord Mont Eagle.
Lord Wynford.
Lord Ashburton.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

Die Veneris, 8° *Aprilis* 1853.

The Lord President.
The Lord Privy Seal.
Earl of Ellenborough.
Lord Elphinstone.
Lord Colville of Culross.
Lord Mont Eagle.
Lord Wharncliffe.
Lord Wynford.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

Die Martis, 12° *Aprilis* 1853.

Marquess of Salisbury.
Earl of Albemarle.
Earl of Harrowby.
Earl of Ellenborough.
Lord Elphinstone.
Lord Colville of Culross.
Lord Mont Eagle.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Ashburton.
Lord Monteagle of Brandon.
Lord Broughton.

Die Jovis, 14° *Aprilis* 1853.

The Lord President.
Earl of Albemarle.
Earl of Harrowby.
Earl of Ellenborough.
Viscount Canning.
Lord Elphinstone.
Lord Mont Eagle.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

Die Veneris, 15° *Aprilis* 1853.

Earl of Harrowby.
Earl of Ellenborough.
Lord Elphinstone.
Lord Colville of Culross.
Lord Mont Eagle.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Ashburton.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

Die Martis, 19° *Aprilis* 1853.

The Lord President.
Marquess of Salisbury.
Earl of Albemarle.
Earl of Harrowby.
Earl of Ellenborough.
Lord Bishop of Oxford.
Lord Elphinstone.
Lord Mont Eagle.
Lord Colchester.
Lord Wharncliffe.
Lord Ashburton.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

NAMES OF THE LORDS PRESENT AT EACH SITTING OF THE COMMITTEE—*continued.*

Die Jovis, 21° *Aprilis* 1853.

The Lord President.
Marquess of Salisbury.
Earl of Harrowby.
Earl of Ellenborough.
Lord Bishop of Oxford.
Lord Elphinstone.
Lord Colville of Culross.
Lord Colchester.
Lord Somerhill.
Lord Wharncliffe.
Lord Wynford.
Lord Ashburton.
Lord Stanley of Alderley.
Lord Broughton.

Die Martis, 26° *Aprilis* 1853.

The Lord President.
Earl of Harrowby.
Earl of Ellenborough.
Lord Elphinstone.
Lord Wodehouse.
Lord Mont Eagle.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Ashburton.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

Die Jovis, 28° *Aprilis* 1853.

The Lord President.
Earl of Harrowby.
Earl of Ellenborough.
Lord Bishop of Oxford.
Lord Elphinstone.
Lord Mont Eagle.
Lord Colchester.
Lord Somerhill.
Lord Wharncliffe.
Lord Wynford.
Lord Ashburton.
Lord Glenelg.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

Die Martis, 3° *Maii* 1853.

The Lord President.
The Lord Privy Seal.
Marquess of Salisbury.
Earl of Harrowby.
Earl of Ellenborough.
Lord Elphinstone.
Lord Wodehouse.
Lord Colchester.
Lord Somerhill.
Lord Wharncliffe.
Lord Wynford.
Lord Monteagle of Brandon.
Lord Broughton.

Die Jovis, 5° *Maii* 1853.

The Lord President.
Earl of Albemarle.
Earl of Harrowby.
Earl of Ellenborough.
Lord Elphinstone.
Lord Mont Eagle.
Lord Wharncliffe.
Lord Wynford.
Lord Stanley of Alderley.
Lord Broughton.

Die Martis, 10° *Maii* 1853.

The Lord President.
Earl of Harrowby.
Earl of Stradbroke.
Earl of Ellenborough.
Lord Elphinstone.
Lord Mont Eagle.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Glenelg.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.

REPORT.

BY THE LORDS COMMITTEES appointed a SELECT COMMITTEE to inquire into the Operation of the Act 3 & 4 Will. 4, c. 85, for the better Government of Her Majesty's INDIAN TERRITORIES, and to report their Observations thereon to the House; and to whom leave was given to report from time to time to the House; and to whom were referred several Petitions, Papers and Documents relative to the subject-matter of the Inquiry :—

ORDERED TO REPORT,

THAT the Committee have met and considered the subject-matter referred to them, and have examined several Witnesses in relation to the Military, Naval and Judicial heads of their Inquiry; and have directed the MINUTES of EVIDENCE taken before them on these heads, together with an APPENDIX and INDEX thereto, to be laid before your Lordships.

12th May 1853.

MINUTES OF EVIDENCE.

LIST OF WITNESSES.

PAGE

Die Martis, 23° *Novembris* 1852.

Philip Melvill, Esquire - - - - - - 3

Die Jovis, 25° *Novembris* 1852.

Lieutenant-General Sir Willoughby Cotton, G.C.B. 29
Lieutenant-General Sir George Pollock, G.C.B. - 36
Lieutenant-General Sir George Berkeley, K.C.B. 43

Die Martis, 30° *Novembris* 1852.

Lieutenant-Colonel William Burlton, C.B. - - 49
Lieutenant-General the Right Hon^ble^ Hugh Viscount Gough, G.C.B. - - - - - 61

Die Jovis, 2° *Decembris* 1852.

Lieutenant-General the Right Hon^ble^ Hugh Viscount Gough, G.C.B. - - - - - 73
Lieutenant-General Sir Charles Napier, G.C.B. - 75
Colonel Robert Alexander - - - - - 95

Die Veneris, 3° *Decembris* 1852.

Colonel Robert Alexander - - - - - 109

Die Jovis, 9° *Decembris* 1852.

The Right Hon^ble^ Henry Viscount Melville - 135

Die Martis, 1° *Martii* 1853.

James Cosmo Melvill, Esquire - - - - - 145
Captain Frederick Thomas Powell - - - 154

Die Jovis, 3° *Martii* 1853.

Mr. Ardaseer Cursetjee - - - - - - 167
Robert Wigram Crawford, Esquire - - - 172

Die Martis, 8° *Martii* 1853.

Rear-Admiral Sir Thomas Herbert, K.C.B., M.P. 185
General the Right Hon^ble^ Henry Viscount Hardinge, G.C.B. - - - - - - - 187

Die Jovis, 10° *Martii* 1853.

David Hill, Esquire - - - - - - 207
Frederic Millett, Esquire - - - - - 229

Die Martis, 15° *Martii* 1853.

The Right Hon^ble^ Sir Edward Ryan - - 237
Sir Erskine Perry - - - - - - - 254

Die Jovis, 17° *Martii* 1853.

Sir Erskine Perry - - - - - - - 269
John Fleming Martin Reid, Esquire - - 285

PAGE

Die Veneris, 18° *Martii* 1853.

John Pollard Willoughby, Esquire - - - 297

Die Martis, 5° *Aprilis* 1853.

John Pollard Willoughby, Esquire - - - 325

Die Veneris, 8° *Aprilis* 1853.

Frederick James Halliday, Esquire - - - 359

Die Martis, 12° *Aprilis* 1853.

Frederick James Halliday, Esquire - - - 383

Die Jovis, 14° *Aprilis* 1853.

The Right Hon^ble^ Thomas Pemberton Leigh - 409
George Campbell, Esquire - - - - 415
Neil Benjamin Edmonstone Baillie, Esquire - 433

Die Veneris, 15° *Aprilis* 1853.

Neil Benjamin Edmonstone Baillie, Esquire - 439

Die Martis, 19° *Aprilis* 1853.

The Reverend Alexander Duff, D.D. - - - 455

Die Jovis, 21° *Aprilis* 1853.

John Abraham Francis Hawkins, Esquire - 485
Henry Lushington, Esquire - - - - 499
Frederick James Halliday, Esquire - - - 512

Die Martis, 26° *Aprilis* 1853.

Henry Lushington, Esquire - - - - 515
Hyder Jung Bahaudoor - - - - - 529
Hafiz Suderool Islam Khan - - - - 537

Die Jovis, 28° *Aprilis* 1853.

The Reverend Henry Melvill, B.D. - - - 541

Die Martis, 3° *Maii* 1853.

John Clarke Marshman, Esquire - - - 561
James Cosmo Melvill, Esquire - - - 587

Die Jovis, 5° *Maii* 1853.

Joshua Patrick Wise, Esquire - - - - 603
Charles Marriott Caldecott, Esquire - - 618

Die Martis, 10° *Maii* 1853.

Henry Reeve, Esquire - - - - - - 629
Lieutenant-Colonel Frederick Abbott, C.B. - 638
Lieutenant-General Sir Charles W. Pasley, K.C.B., F.R.S. - - - - - - - 649

LIBRARY
1859

Die Martis, 23° *Novembris* 1852.

LORDS PRESENT:

The Lord Privy Seal.
Marquess of Tweeddale.
Earl of Albemarle.
Earl of Ellenborough.
Viscount Gough.
Lord Bishop of Oxford.
Lord Elphinstone.
Lord Sundridge.
Lord Wodehouse.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Panmure.
Lord Ashburton.
Lord Stanley of Alderley.
Lord Broughton.
Viscount Canning.

THE LORD PRIVY SEAL in the Chair.

Evidence on the Government of Indian Territories.

P. Melvill, Esq.

23d Nov. 1852.

PHILIP MELVILL, Esquire, is called in, and examined as follows:

1. *Chairman.*] WHAT office do you fill?
That of Secretary in the Military Department to the East India Company.

2. How long have you held it?
Fifteen years.

3. Will you specify the strength of the army in India, according to the last returns?
Two hundred and eighty-nine thousand five hundred and twenty-nine.

4. Will you state the different species of force of which that is composed?
With regard to the Queen's army, there are five regiments of Dragoons, and 24 regiments of Infantry.

5. What is the estimated strength?
The present strength of the Royal forces in India amounts to 29,480 men.

6. Earl of *Ellenborough.*] When you speak of numbers, do you speak of the establishment, or of the actual strength?
The actual strength.

7. Lord *Panmure.*] Is that above the established strength, or below the established strength?
The established strength is a thousand men per regiment. The established and the actual strength are as nearly as possible alike. They have been maintained to the full establishment; but not exceeding it.

8. Is it not the case, that generally in India, the Queen's regiments are rather kept above than under their establishment?
I think not.

9. *Chairman.*] Will you state the strength of the other forces?
The aggregate of the Native Infantry is 157,711.

10. Of which how many belong to Bengal, and how many to the other Presidencies?
I have not here the division into Presidencies; the statement in my hand applies to the whole of India, not to the separate Presidencies.

P. Melvill, Esq.

23d Nov. 1852.

11. Will you furnish the Committee with a tabular statement of the force in each Presidency?

I will do so.

12. What is the strength of the Cavalry?

Of the regular Cavalry there are 10,186 men, native troops; of the Irregular Cavalry there are 21,020 men.

13. Earl of *Ellenborough.*] When you speak of Irregular Cavalry, you do not refer to the Irregular Cavalry belonging to the several contingents; Gwalior and others?

No; they are quite separate.

14. Lord *Broughton.*] Do you include in that number the Scinde Horse; Major Jacob's Irregular Horse?

Yes. The irregular infantry amount to 39,388 men.

15. Earl of *Ellenborough.*] The Cavalry force of about 20,000 men, besides the contingents, are officered from the regular army?

They are.

16. *Chairman.*] What is the force of your Artillery, European and Native?

Sixteen thousand four hundred and forty European and Native; it is all in the Company's service.

17. Can you distinguish between European and Native?

Yes; in the Horse Artillery there are 2,010 Europeans non-commissioned, and rank and file; of the European Foot Artillery there are 4,912; of the Native Foot Artillery, 3,536.

18. What is the number of Horse Artillery?

There are six troops of Native Horse Artillery, comprising 659 non-commissioned and rank and file.

19. Earl of *Ellenborough.*] Can you state the strength of the Company's European Infantry?

Yes; there are six regiments. Then for the Artillery, there are other totals which come into the aggregate; in the first place, there are the European officers: then there are the Lascars, who are considered fighting men; then there are the Ordnance Drivers, who are also considered to be fighting men. Altogether the aggregate of the Artillery is 16,440.

20. *Chairman.*] You say that there is a Horse Artillery of 2,010 Europeans; are there any Natives attached to them?

Yes; 343 gun Lascars. The troops of Native Horse Artillery have 108 Lascars attached to them.

21. Are you speaking of the Native or the European part?

Of both.

22. Will you state how many Lascars there are attached to the Horse Artillery?

There are 451 Lascars attached to the 2,010 Europeans of Horse Artillery, and to the 659 Native Horse Artillery.

23. And the European Foot Artillery consists of 4,912?

Yes, with 1,567 Lascars and 1,675 Ordnance Drivers.

24. Those are Native also?

Yes. Then there are 327 Lascars to be added to the 3,536 Native non-commissioned, rank and file, and 789 Ordnance Drivers.

25. What is the total?

Including the European officers, it makes a total of 16,440.

26. What is the number of Lascars attached to the Native Horse Artillery?

There are 108 Lascars attached to the Native Horse Artillery.

27. How many European officers are there?

There are 125 European officers attached to the Horse Artillery, 231 to the European Foot Artillery, and 125 to the Native Foot Artillery.

28. Lord

P. Melvill, Esq.

23d Nov. 1852.

28. Lord *Broughton.*] You have a tabular statement of the whole Indian army, of all descriptions of arms?
Yes; that has been already laid before the Committee.

29. Earl of *Ellenborough.*] Will you be so good as to furnish the Committee with a tabular statement, showing the numbers, according to the last return, and with a map showing the position of the troops?
A map was prepared for this Committee, showing the stations of the army, and the whole of the circles and military divisions.

30. *Chairman.*] What is the strength of the European Infantry?
The strength of the Company's European Infantry is 6,266.

31. Will you furnish a statement of the strength of the army in India for the last 50 years?
I will do so.

32. What has been the increase in the European force since the year 1834?
Of the Royal army, one regiment of Dragoons and four regiments of Infantry.

33. Will you state the presumed strength of those regiments?
The regiment of Dragoons would be about 750; the four regiments of Infantry would be about 4,400. There has been also an increase in the strength of the regiments, which are now all on the war establishment.

34. Earl of *Ellenborough.*] Has not the number of European troops varied very much during the last 20 years; has it not been down as low as 23,000, and is it not up now to 29,000?
Yes. The addition to the Royal forces during that period, since the year 1834–5, amounts to 11,800; but I may mention, that the additional regiment of Dragoons is considered by the Governor-general of India to be no longer required, and that, in consequence, the intention which had existed of sending out a relief for a regiment whose term of service has expired, has been abandoned. There has been, besides, an addition of three regiments to the European Infantry of the Company's army. The aggregate addition to the European force is 16,585 since the year 1834–5.

35. *Chairman.*] Will you state the strength of the army in 1834, and what it is at the present period?
In the year 1834, the aggregate of the army was 187,866.

36. Was that a period of peace?
That was a period of peace. Of those, 32,310 were Europeans, and 155,556 were natives. In the year 1835 the aggregate was 183,760; the Europeans were 30,822, and the natives 152,938. In the year 1836 the aggregate was 186,039, of whom 32,733 were Europeans, and 153,706 natives.

37. Was that a period of peace?
That was a period of peace. In the year 1837 the aggregate was 186,531, of whom 32,502 were Europeans, and 154,029 natives. In the year 1838 the aggregate was 185,306, of whom 31,526 were Europeans, and 153,780 natives. In the year 1839 the aggregate was 207,140.

38. Was that a time of war?
That was the first Affghan war. Of those, the Europeans were 31,132, and the natives 176,008; then in 1840 the aggregate was 235,443, of whom the Europeans were 35,604, and the natives 199,839. In 1841 the aggregate was 251,022, of whom the Europeans were 38,406, and the Natives 212,616. In 1842 the aggregate was 254,737, of whom the Europeans were 42,113, and the Natives 212,624. In 1843 the aggregate was 267,673, of whom the Europeans were 46,726, and the Natives 220,947. In 1844 the aggregate was 262,820, of whom the Europeans were 46,240, and the Natives 216,580. In 1845 the aggregate was 286,421, of which 46,111 were Europeans, and 240,310 Natives. In 1846 the aggregate was 284,747, of whom 44,014 were Europeans, and 240,733 Natives. In 1847 the aggregate was 291,796, of which 44,323 were Europeans, and 247,473 Natives. In 1848 the aggregate was 265,161, of whom 44,270 were

P. Melvill, Esq.

23d Nov. 1852.

were Europeans, and 220,891 Natives. In 1849 the aggregate was 277,023, of which 47,893 were Europeans, and 229,130 Natives. In the year 1850 the aggregate was 277,728, of whom 49,280 were Europeans, and 228,448 Natives. In the last year of which the returns were made, viz. 1851, the aggregate is 289,529, of whom 49,408 were Europeans, and 240,121 Natives.

39. Earl of *Ellenborough.*] Can you state the total force of the army at the end of the Pindaree war?
That would be the year 1818; I have not got that here.

40. *Chairman.*] In the statement which you have given, do you include the whole force, regular and irregular?
The whole.

41. Earl of *Ellenborough.*] But not the contingents?
Not the contingents; their amount in the aggregate is about 32,000 in addition.

42. *Chairman.*] Are there any Europeans in those contingents?
Not any, except European officers lent from the Company's army.

43. Can you state the constitution of the force as to officers in each regiment?
Each regiment of Native Infantry has one Colonel, one Lieutenant-colonel, one Major, six Captains, ten Lieutenants and five Ensigns, European officers.

44. How many Native officers?
Of Native officers the number is ten Soubahdars, ten Jemadars. The non-commissioned are 60 havildars and 60 naiks, and at present 1,000 privates in Bengal. In the other Presidencies the strength is less.

45. Are the European regiments in the Company's service formed upon the same basis?
The European regiments in the Company's service have a double establishment of officers as compared with the Native troops, except as to the Colonel; there is one Colonel to the whole.

46. Earl of *Ellenborough.*] Can you furnish the Committee with a statement of the mortality and invaliding in the Company's European regiments, so as to compare it with the mortality and invaliding in the Queen's regiments?
Yes, I have such a return.

47. *Chairman.*] Can you now state the constitution of the Artillery force with regard to officers?
The Artillery are organized on the following scale; viz. to each brigade or battalion of four troops or companies, there are one Colonel, one Lieutenant-colonel, one Major, five Captains, ten First Lieutenants and five Second Lieutenants.

48. Is the pay of the European troops in the Company's service the same as that of the troops of Her Majesty?
The pay of the Queen's Infantry in India and of the Company's European Infantry is exactly the same; it rather exceeds the amount authorized by the Queen's regulations. The pay and allowances of the Artillery are rather less than those in the Royal Artillery, if converted into rupees at the rate of 2*s.* 0½*d* the rupee.

49. What is the rate of pay of the European officers in the Native army?
I have the pay table, which I will put in.

The same is delivered in, and is as follows:

TABLE

TABLE of PAY and ALLOWANCES for any Month.

CORPS AND RANK.	In Garrison or Cantonment within 200 Miles of direct Distance from the Seat of Government of each Presidency.					In the Field and in Garrison or Cantonment beyond 200 Miles of direct Distance from the Seat of Government of each Presidency.				
	Pay and Indian Allowance.	Regimental House Rent.	Horse Allowance.	Tent.	TOTAL.	Pay and Indian Allowance.	Extra Batta.	Horse Allowance.	Tentage.	TOTAL.
	Rs. *a.* *p.*	*Rs.*	*Rs.* *a.* *p.*	*Rs.*	*Rs.* *a.* *p.*	*Rs.* *a.* *p.*	*Rs.* *a.* *p.*	*Rs.* *a.* *p.*	*Rs.*	*Rs.* *a.* *p.*
HORSE ARTILLERY AND CAVALRY:										
Colonel - - - - - - -	1,158 7 –	- -	120 – –	200	1,478 7 –	1,158 7 –	- - -	120 – –	200	1,478 7 –
Lieutenant-colonel - - - - -	582 10 –	100	120 – –	150	952 10 –	582 10 –	304 6 –	120 – –	150	1,157 – –
Major - - - - - - -	461 1 10	80	120 – –	120	781 1 10	461 1 10	228 4 6	120 – –	120	929 6 4
Captain or Surgeon, or Veterinary Surgeon, 20 years' service - - -	306 11 4	50	90 – –	75	521 11 4	306 11 4	91 5 –	90 – –	75	563 – 4
Lieutenant or Assistant Surgeon or Veterinary Surgeon, 10 years' service -	194 6 –	30	60 – –	50	334 6 –	194 6 –	60 14 –	60 – –	50	365 4 –
Cornet or Veterinary Surgeon, under 10 years' service - - - -	154 15 10	25	60 – –	50	289 15 10	154 15 10	45 10 6	60 – –	50	310 10 4
FOOT ARTILLERY AND ENGINEERS:										
Colonel - - - - - - -	1,065 5 –	- -	30 – –	200	1,295 5 –	1,065 5 –	- - -	30 – –	200	1,295 5 –
Lieutenant-colonel - - - - -	547 14 –	100	30 – –	150	827 14 –	547 14 –	304 6 –	30 – –	150	1,032 4 –
Major - - - - - - -	410 14 6	80	30 – –	120	640 14 6	410 14 6	228 4 6	30 – –	120	789 3 –
Captain or Surgeon - - - - -	267 5 –	50	- - -	75	392 5 –	267 5 –	91 5 –	- - -	75	433 10 –
Lieutenant or Assistant Surgeon - -	154 14 –	30	- - -	50	234 14 –	154 14 –	60 14 –	- - -	50	265 12 –
Second Lieutenant - - - - -	117 10 6	25	- - -	50	192 10 6	117 10 6	45 10 6	- - -	50	218 5 –
EUROPEAN AND NATIVE INFANTRY:										
Colonel - - - - - - -	1,065 5 –	- -	30 – –	200	1,295 5 –	1,065 5 –	- - -	30 – –	200	1,295 5 –
Lieutenant-colonel - - - - -	547 14 –	100	30 – –	150	827 14 –	547 14 –	304 6 –	30 – –	150	1,032 4 –
Major - - - - - - -	410 14 6	80	30 – –	120	640 14 6	410 14 6	228 4 6	30 – –	120	789 3 –
Captain or Surgeon - - - - -	249 1 –	50	- - -	75	374 1 –	249 1 –	91 5 –	- - -	75	415 6 –
Lieutenant or Assistant Surgeon - -	145 12 –	30	- - -	50	225 12 –	145 12 –	60 14 –	- - -	50	256 10 –
Ensign - - - - - - -	107 1 11	25	- - -	50	182 4 11	107 1 11	45 10 6	- - -	50	202 12 5

P. Melvill, Esq.

23d Nov. 1852.

50. Can you state at what period the additions to the European Infantry principally took place?

Three European regiments of the Company's army were added in the year 1839, at the earnest request of Lord Auckland, who considered that with reference to the political state of affairs at that time, the European Infantry force was not sufficiently large.

51. Has it been increased or decreased since that period?

There has been an addition to the Queen's troops since that time of four European Infantry regiments. Those four are a portion of the five which were sent out during the last Sikh war; four of them remain, one has returned.

52. [illegible]f *Ellenborough.*] Were not five regiments sent out to India after the disaster at Cabul?

There were.

53. Four from England and one from New South Wales?

Yes, six were sent; but these were gradually withdrawn afterwards.

54. There have also been detachments sent to China?

Yes.

55. *Chairman.*] What has been the increase to the regular Native Infantry?

The increase to the regular Native Infantry consists chiefly in restoring the two companies per regiment, which were reduced in the year 1828, and in raising the Bengal regiments to the war standard of 1,000 men each. No additional regiment of Native Infantry has been raised, either for Bengal or Madras. Three regiments have been added for Bombay.

56. Lord *Broughton.*] When the numerical strength of the regiment was increased, there was no addition to the staff of the regiment?

The number of native commissioned and non-commissioned officers was increased in proportion.

57. *Chairman.*] Has there been an increase in the regular Native Cavalry?

Not any; the establishment remains as in 1834.

58. Earl of *Ellenborough.*] Has not the strength of the Company's regiments on the Bengal establishment been frequently changed during the last 20 years?

It has.

59. For instance, there was a reduction on the return of the army from Cabul, which was again replaced?

Yes.

60. *Chairman.*] Has there been an increase in the Irregular Cavalry?

In the Irregular Horse in the year 1834–5 there were six regiments only; namely, five at Bengal, and one at Bombay. There are now 23 in Bengal, and six at Bombay.

61. On what grounds were those additions made?

Of the 18 additional regiments of Cavalry, 13 were raised in consequence of the Sikh wars, and the annexation of the Punjaub; the remaining five I will specify: One was raised in 1837, as a portion of the Oude auxiliary force, under the new treaty with the king of Oude. One was raised when the second regiment of Native Cavalry was disbanded; one at the time of the Cabul disaster; one in 1844 for service in Scinde; and one was formed in the same year, from the Cavalry of the Bundlecund Legion, for civil duties in the Saugor and Bundlecund districts.

62. Earl of *Ellenborough.*] The Scinde Horse was doubled in 1843, but had it not existed several years before?

The regiment referred to was formed from Christie's Horse in Shah Shoojah's employ in Scinde, in the year 1844. With regard to the Bombay Irregular Horse, of the five additional corps raised, two were for service on the frontier of Scinde. These are known as the Scinde Irregular or Jacob's Horse, which have been employed with so much success near Kanghur. The remaining three are corps raised for police purposes; namely, the Guzerat Horse, the Southern Mahratta Horse, and the Jagheerdar Horse stationed at Belgaum.

P. Melvill, Esq.

23d Nov. 1852.

63. *Chairman.*] Is the recruiting for the Native force carried on by voluntary enlistment?

Entirely by voluntary enlistment, without bounty.

64. For what period of service?

They are enlisted for unlimited service.

65. What is their rate of pay?

The rate of pay of a sepoy is seven rupees (14 *s.*) a month.

66. Are there any allowances in addition?

He gets an extra rate of batta when he is marching: a rupee and a half (3 *s.*) a month; he has also his clothing, and he has hutting-money when he changes his quarters.

67. Is he entitled to any retiring pension?

After 15 years' service, if he is invalided, he is entitled to a retiring pension.

68. But not unless he is invalided?

Not unless he has lost his health, and is unfit for service.

69. At what period of time does he become entitled to a pension, without being invalided?

At no period; he is not entitled to a pension at any period, unless he is invalided.

70. Of what class of persons is the force of Bengal principally composed?

They are chiefly Hindoos of the highest caste.

71. Are they enlisted for general service, or are their services confined to any particular service?

Except particular corps, which are called General Service Corps, they are enlisted to march wherever they may be required to march, but with the understanding that they are not to embark on ships for foreign service, beyond sea,

72. You have stated that there are General Service Corps; is there any other distinction in the conditions of enlistment?

Not any.

73. Earl of *Ellenborough.*] What is the number of General Service Corps?

There are six in Beng

74. Can you state whether there is any more difficulty in obtaining recruits for those corps, than there is in obtaining recruits for other corps?

Not any.

75. Are the recruits for those corps a different class of men than the others?

Not at all.

76. Of what class are the soldiers in the Madras Presidency?

In the Madras Presidency there are more Mahomedans in the army than in Bengal; but the difference is not very material, except in the Cavalry at Madras, which is nearly wholly composed of Mahomedans.

77. The rate of pay you have stated to be the same?

Yes.

78. And the conditions of service the same?

The same; except that at Madras and Bombay, every man enlists upon the understanding that he is to go wherever he is sent.

79. Of what class of persons does the Bombay army consist?

One half nearly of the Bombay army is composed of Hindostanee men; a great many of them come from Oude; the remainder are composed chiefly of men enlisted in the Concan.

80. They are enlisted for general service?

Yes.

81. Do the Sikh force belong to the Bengal army?

Yes.

82. Of what class of men are they?

The Irregular Corps of Infantry raised by Lord Hardinge are composed of

P. Melvill, Esq.
23d Nov. 1852.

Sikhs; but the Punjaub regiments raised by Lord Dalhousie, are only partially composed of Sikhs, and the remainder are Punjaubees (not Sikhs), or men from Hindostan.

83. Is there any difficulty in obtaining recruits for the army?
Not the slightest; every regiment is full; and there are always men waiting to be enlisted.

84. Lord *Wharncliffe.*] Does not the fact of the Bombay army being composed almost entirely of Hindostanee men from Bengal, seem to show that there is a difficulty of obtaining recruits for the Bombay Presidency?
They would have no difficulty in filling the ranks entirely from the Bombay Presidency if they pleased; but the men who come from Hindostan are finer looking men, and the commanding officers like to have a certain portion of them of that class; there are about one-half of them in the Bombay army.

85. Are the recruits from the Bengal Presidency a finer class of men than could be found within the Presidency of Bombay?
The Sepoys from Oude are generally men of finer stature than those which are obtained from the Concan and other districts from which they enlist in Bombay.

86. They are not always men resident in our own territory?
Certainly not; a large part of the Sepoys are from the territories of a foreign prince.

87. Marquis of *Tweeddale.*] Have you a statement of the different parts of India from which the Sepoys composing the different regiments come?
I have a statement of the different castes, but not of the places of their enlistment.

88. Will you give it in?

The same is delivered in, and read, as follows:

STATEMENT of the CASTES in the BENGAL NATIVE INFANTRY, composed of 74 Regiments.

Year	Christians.	Mahomedans.	Brahmins.	Rajpoots.	Hindoos of Inferior Description.	Seiks.
1851.	1,118	12,699	26,983	27,335	15,761	50
				70,079		

GRAND TOTAL - - - 83,946

Note.—The Bengal Returns do not furnish the required information for the Native Cavalry.

STATEMENT of the CASTES in the MADRAS NATIVE INFANTRY, composed of 52 Regiments.

Year	Christians.	Mahomedans.	Brahmins and Rajpoots.	Mahrattas.	Telingas (Gentoo).	Tamil.	Other Castes.	Indo-Britons.
1851.	1,650	15,790	2,037	452	16,590	4,792	1,805	1,075

GRAND TOTAL - - - 44,191

P. Melvill, Esq.

23d Nov. 1852.

STATEMENT of the CASTES in the MADRAS NATIVE CAVALRY, composed of 8 Regiments.

Year	Christians.	Mahomedans.	Rajpoots.	Mahrattas.	Other Castes.	Indo-Britons.
1850-1.	13	2,569	120	349	45	194

GRAND TOTAL - - - 3,290

STATEMENT of the CASTES in the BOMBAY NATIVE INFANTRY, composed of 29 Regiments.

Year	Christians.	Mahomedans.	Brahmins and Rajpoots.	Mahrattas.	Telingas (Gentoo).	Tamil.	Purwarel.	Other Castes.*	Indo-Britons.
1850-1.	252	1,920	6,928	8,037	138	5	—	8,646	12

GRAND TOTAL - - - 25,938

STATEMENT of the CASTES in the BOMBAY NATIVE CAVALRY, composed of 3 Regiments.

Year	Christians.	Mahomedans.	Rajpoots.	Mahrattas.	Other Castes.
1850-1.	84	435	406	109	441

GRAND TOTAL - - - 1,475

89. *Chairman.*] You have stated that the principal part of the troops come from the Native States: are their pensions paid in those Native States?

Yes; they are paid in the neighbourhood, by the nearest paymaster.

90. What is the amount of the retiring pension of a Sepoy?

Four rupees (8*s.*) a month is the first grant; that is more than half his ordinary rate of pay.

91. What is the number of guns that you can bring into the field?

The number of field guns has been increased from 312 to 384 for the whole of India, being an increase of one troop of Horse Artillery, and of eleven field batteries.

92. Has there been a considerable increase in the number of European officers in the Company's service since 1834?

In the year 1834, the regiments were all on a reduced peace establishment, two companies and two troops having been struck off from each regiment in the year 1828, with three officers to each regiment. Those were restored part in the year 1839, and the remainder in 1842. The number of officers so reduced and afterwards restored, amounted to 534. The addition of three European and three Native Infantry regiments occasioned an addition of 204 officers; one Captain has been added to each regiment of Cavalry and Infantry to meet the increased demands for staff in that particular rank, amounting to 188. It has also been found necessary to add to the Artillery 88 officers, and to the Engineers 44, making 132. The aggregate of these additions is 1,058 European officers, as compared with the establishment in 1834.

93. What was the Establishment in 1834?

In 1834, the aggregate establishment was 4,084, and it is now 5,142.

---

* Purwarrees and Jews.

P. Melvill, Esq.

23d Nov. 1852.

94. Earl of *Ellenborough.*] Therefore, there is now in each regiment one officer more than there was before the reduction in 1828?
Yes.

95. *Chairman.*] Have the demands for the service of officers on detached employment greatly increased?
Yes; in the year 1834 the number of officers required for all demands, extra regimental, amounted to 532; the demand is now 1,040; being an increase of 508 for the whole of the Indian army, not including Engineers.

96. Earl of *Ellenborough.*] Will you compare with that the increase of officers during that period, so as to see whether the increase of officers is sufficient to meet the new demand?
The increase of officers which I have mentioned, is in part applicable to an increase of the regiments and companies; and, therefore, the comparison will not hold between the one and the other. The increase of officers for staff specifically has been only 188. The other additions have been for whole regiments or for companies. The demand for officers for the staff has been provided for chiefly out of the establishment of regimental officers. I should explain, that with an establishment of 22 officers per regiment, which was the number, exclusive of the Colonel, as fixed in the year 1823, it was computed that five could be spared from each regiment for detached duties. In 1834 the average so detached, was less than three per regiment, taking the average of the whole army at the three Presidencies, so that upon this calculation, there were two to spare. It is now about five per regiment on the average of the whole army. To meet the great demand for detached officers of the rank of Captain, one officer of that rank has been added to each regiment of Cavalry and Infantry. This has been the only addition made specifically to provide for the additional demands for the staff.

97. What is the total additional demand for the staff?
Five hundred and eight.

98. And you have added one officer per regiment to meet that demand?
To meet that demand in the particular rank of Captain.

99. How many does that come to?
One hundred and eighty-eight.

100. Then in addition to that, you had before to spare, two per regiment?
Yes.

101. That makes 564?
Yes.

102. So that according to the old calculation, the regiments are still capable of providing the requisite number of officers?
Yes; if the number be distributed rateably through the whole.

103. Has the opening of the overland communication affected the number of officers absent on furlough?
The number is less now on the average than in the five years preceding the change; that is, from 1830 to 1835.

104. *Chairman.*] Has the demand for officers been equally large on the armies in the different Presidencies?
At present the average drain for officers is, from the Bengal regiments, six; from the Bombay regiments, five; and from those at Madras, three and a half per regiment.

105. Is it desirable to equalize that demand?
Most desirable; the Home authorities have urgently pressed upon the authorities of Bengal and Bombay, to avail themselves as much as possible of the services of Madras officers for appointments which are open to the officers of the three Presidencies, and this object is now being gradually carried out.

106. Can you take officers of the Madras army or of the Bombay army who do not understand Hindostanee, to act in the capacity of adjutants of Hindostanee regiments?
The Madras and Bombay officers are mostly qualified in Hindostanee. Those officers

P. Melvill, Esq.

23d Nov. 1852.

officers of the Madras army who have gone on service with the Sikh regiments, or other corps of that kind, are found quite as efficient as the Bengal officers.

107. Marquis of *Tweeddale.*] What is the military language in a Sepoy regiment in the Madras Presidency?
Hindostanee is the military language of the Sepoys in the whole of Hindostan.

108. Are not the officers obliged to pass in the Hindostanee language?
They are.

109. Viscount *Gough.*] Are not they obliged to pass in some other language, for the staff?
They are not obliged to pass in any other. They must pass a literary test in Hindostanee. It was at one time proposed that interpreters should also pass in Tamul or Teloogoo, according to the description of Sepoys in their particular corps; but it was found undesirable to enforce that rule, and it has been given up.

110 *Chairman.*] How long has the present system of withdrawing officers from their regiments for other than regimental services prevailed?
Ever since the year 1796, when regimental rise was first introduced.

111. Lord *Stanley* of Alderley.] Is it the case in any of the regiments in the Madras Presidency, that there are officers even holding staff appointments in the regiments, who do not understand the language of the troops whom they have to command?
I believe I can safely say that the officers who have been in the service three or four years can now all communicate in Hindostanee with the men of their regiments. A rule was established some 10 years ago, that until they had passed a colloquial examination in Hindostanee, they should not have the charge of a company. That rule has been rigidly enforced; and in consequence, I believe, every officer can now speak Hindostanee sufficiently after he has been three years in the service.

112. Did you not state that there were many regiments in which the Tamul language or the Teloogoo language was the language of the soldiers; but of which language the officer was not required to have any knowledge, so that, as far as the soldiers were concerned, he would be unable to communicate with them in their native language?
But all those soldiers learn Hindostanee; they speak it in addition to their own language.

113. Lord *Broughton.*] Is that so?
The information I have is, that all the men learn Hindostanee; that is the camp language of India. The language of their village may be Tamul or Teloogoo, but they learn sufficient Hindostanee to understand what is said to them in that language. In the year 1850 the Government of Madras stated, that of the 52,773 soldiers in their native army, 47,480 possessed sufficient knowledge of Hindostanee to be able to state their wants in it; and that no doubt was entertained of the remainder becoming, in due course, sufficiently acquainted with that language to be able to communicate therein with their officers and fellow-soldiers.

114. Lord *Stanley* of Alderley.] You were understood to state, that formerly it was required that an officer obtaining a staff appointment in his regiment should pass an examination in the Tamul and Teloogoo language; when did this requirement cease?
About three years ago. It was represented by the Government of Madras, that the officers were very much discouraged in their study of languages by the establishment of the rule, that they must also qualify in Tamul or Teloogoo, and it was then abandoned.

115. Lord *Broughton.*] Is it not quite a modern requirement that they should know Teloogoo and Tamul?
It is.

116. Lord *Elphinstone.*] Is it not the fact, that the exemption from learning Teloogoo and Tamul only applies to the command of companies; but that, in

order to be an interpreter or the adjutant of a regiment, to hold a staff appointment, in fact, a man must still pass an examination in Tamul and Teloogoo?
No, that has been given up; he need only pass in Hindostanee.

117. Earl of *Ellenborough.*] Can you compare the present establishment of the regiments with the establishment as it was in the time of Lord Clive, and subsequently, till the time of Lord Cornwallis?
Yes, we have ample means for making the comparison. At the time of Lord Clive, a regiment had only three officers with it, as the irregular corps now have.

118. *Chairman.*] Will you state the gross amount of charge for the army in India, independently of the artillery?
I am not prepared with the financial details, but I can state generally that the aggregate expense of the army in the last year for which the returns were made, was 10,000,000 *l.*

119. Earl of *Ellenborough.*] Can you state the economical results of the reduction of officers and of companies in the year 1828?
I am not prepared with the return, but I can easily furnish it to the Committee.

120. *Chairman.*] When you state 10,000,000 *l.* to be the expense of the army, do you include in that the pay and allowances, and all the army extras, or simply the pay?
Every expenditure which is brought to account under the head of the army, including the commissariat, the staff and military buildings.

121. Is there any return in which those charges are separated?
They are, I believe, separated in the return which has been laid before your Lordships.

122. Is the number of officers that can be withdrawn from any one regiment settled by any regulation?
Yes; the regulation is this: that no more than six officers shall be withdrawn from any one regiment, and that of those six, no more than three shall be of the regimental rank of captain.

123. Has that in any case been exceeded?
It has been exceeded under circumstances of emergency in Bengal, and at Bombay.

124. Have you an account of the average number of absentees from the regiments on furlough and on sick certificate?
The number of absentees on furlough to Europe on private affairs averages less than one per regiment. Those on sick certificate to Europe average about two and a half per regiment. Including those absent on leave in India or on a voyage to sea, the whole of the absentees on furlough to Europe or elsewhere average between four and five per regiment, colonels not being included in the calculation.

125. Lord *Broughton.*] Does that include those who are politically employed?
This statement has reference to those absent on leave only, not including those absent on staff or political employments.

126. *Chairman.*] Have any changes taken place in the constitution of the Company's military service during the present Charter?
The constitution of the service remains unchanged; but there have been many alterations in the regulations, dictated by a desire to improve the efficiency of the army, and to benefit the officers and soldiers belonging to it.

127. When was the army first formed into regiments?
In the year 1796. Till that time seniority prevailed through the whole army.

128. You said that many changes have taken place for the improvement of the condition of the officers and soldiers; will you specify those changes, first, with regard to the European officers?
The changes in which the European officers are most concerned, affect their retirement from the service. Prior to the year 1835, they could only retire on the full-pay of the rank which they had attained in their regiments after 22 years'

P. Melvill, Esq.

23d Nov. 1852.

actual service in India. The uncertainties of regimental rise are so great, that it frequently happens that in the course of the same period of service one officer will be a lieutenant-colonel and another only a captain. It was thought advisable to lessen the effect of these disparities by establishing a rule, giving to officers the alternative of taking retiring pay according to length of service or the rank they had attained. Thus, it was said, if you have served in India 20 years, you may retire as a captain; if 24 years, as major; if 28, as lieutenant-colonel; and if 32 years, as colonel. You may take either the pension of the rank you have attained, or a pension according to length of service, whichever is most advantageous to you.

129. You have alluded to the disparity of rise in the service; will you have the goodness to state how the rise in the service takes place?
They rise from the junior Ensign to the rank of Major regimentally. It is during their progress to this rank that the great differences take place between the officers in different regiments. They afterwards rise in line, in their own arm of the service, to the rank of Colonel.

130. In the same manner as in the British army?
Except that it is by seniority.

131. Does not the practice generally prevail of purchasing out the senior officer to create a rise in the regiment?
That practice prevails to a great extent.

132. With the tacit sanction, but not with the knowledge of the Directors?
Not in individual cases.

133. What has been the effect of the change which has been made in the system of retirement; has it been satisfactory to the officers?
The first and great effect has been to soothe the feelings of the officers with regard to the rate of their retiring pension; they know that however unfortunate they may be, as compared with others in regimental rise, that rate of pension is secured to them; the healing effect of this change has been most beneficial.

134. Has it increased the number of retiring pensions?
It has not materially.

135. Earl of *Ellenborough.*] Have they not also brevet-rank after a certain number of years' service?
Every subaltern in the army who does not obtain a company in 15 years, receives the brevet of a captain.

136. *Chairman.*] You stated that there has been no material increase in the number of retirements; can you give the Committee any statement by which that is shown?
The number is increasing, as a necessary consequence of the additions made from time to time to the number of European officers, but the per-centage is much the same; it is less than two per cent. from all causes, whether retiring on full or half-pay, or resigning without any pay; and it has been much the same for the last 30 years.

137. Are there many officers that remain in the service after they are entitled to their retiring pension?
Yes, there are now 1,098 entitled to retire on full pay, of whom 557 are entitled to retire on the pay of a rank superior to that which they have attained.

138. Earl of *Ellenborough.*] Have not the arrangements made amongst the officers in the regiments for buying out officers above them very materially contributed to increase the number of retirements?
The number of retirements has not materially increased from all causes.

139. But many do proceed from that cause now?
No doubt.

140. *Chairman.*] What other advantages have been granted to the officers?
There has been great liberality on the part of the Commander-in-chief and Her Majesty's Government, in recognising the claims of the Company's officers to distinctions and honours for their services in action. In the last 15 years not

P. Melvill, Esq.

23d Nov., 1852.

not less than 350 have received special brevets, and 213 have received honours of the Bath.

141. Is a special brevet given by the Crown or by the Company?
By the Crown.

142. Lord *Wharncliffe.*] Are those all officers of the Company's service?
They are. I may also mention that the privilege of being appointed Aide-de-camp to the Queen has been conceded to the Company's officers, and 13 distinguished officers have been so honoured.

143. Earl of *Ellenborough.*] The particular advantage of that is, that it gives them at once the rank of colonel?
Just so. Another advantage given since the year 1834, which may be considered as appertaining to European officers, is the grant of special pensions and allowances to the widows and orphans of officers killed in action. I may also mention, that a great advantage has been conceded to officers in allowing them to make remittances through the Company's treasury for the maintenance of their children or families in Europe. The amount is graduated according to rank, from 400 *l.* to 50 *l.* a year. Previously to this change, officers were compelled to resort to commercial agents for the remittance of their funds; they now remit them periodically and regularly through the Company's treasury in London.

144. Viscount *Canning.*] Does that effect any considerable saving to them?
Certainly; but the regularity is more important than the saving.

145. *Chairman.*] How long has that system been in force?
About 15 years.

146. Is any particular rate of exchange fixed for the purpose, or is it at the rate of exchange of the day?
I believe the exchange of the day.

147. Lord *Elphinstone.*] Previously to this, they paid an agency of 1 per cent. upon all money received and all money paid?
They must have paid the usual commercial agency.

148. *Chairman.*] Has this system of remittance been universally adopted by the officers?
To a very large extent; most who have families in England avail themselves of that means of remittance.

149. It is optional to them to do so?
Quite.

150. And it is generally deemed so great an advantage, that they have availed themselves of it?
Most extensively.

151. Earl of *Ellenborough.*] Was not an advantage once given to the officers which has since been withdrawn, namely, that of advancing to them money from the public treasury at a moderate rate of interest for the purpose of building bungalows in stations?
It was continued for a short time, and then abandoned.

152. Do you know the amount of saving which that afforded to the officers during the short time it was in existence?
I have never seen any calculation of it.

153. Was it not about 15 per cent.?
I believe it was so stated in the official papers, when officers were compelled to borrow money for the purpose.

154. Lord *Wharncliffe.*] Can you state the reasons of its being abandoned?
It was granted under peculiar circumstances, at a time when hill stations were being established, and when there was a great demand upon the officers' finances by changes of station; buildings on the hills were more expensive than buildings on the plain.

155. Earl of *Ellenborough.*] Was there not this further reason, that officers

P. Melvill, Esq.

23d Nov. 1852.

were at that time frequently obliged to build a bungalow in one station, and were then removed to another station in the course of a very short period of time?

That ground for the measure was stated.

156. *Chairman.*] Will you now specify what changes have been made for the advantage of the European soldier?

With regard to the European soldiers, the Home authorities have certainly been very anxious to adopt all measures to improve their condition, and several measures have been taken with that view; if the Committee will not think I am going too much into detail, I will begin with the recruits and those going to India for the first time; one thing which I believe is a very great improvement is this, the practice of allowing them rations of spirits during their voyage to India has been abolished; they are now allowed instead, a ration of one pint of porter per diem during the voyage; with the permission of the Committee I will read what the Court of Directors said on this subject in the year 1837:—"We take this opportunity of apprising you that we have resolved to try the experiment this season of substituting porter for spirits in the rations of the recruits and troops to be embarked for India; we shall thus have adopted every means within our power for placing the soldier in India free from a habit of using spirits; and we must then rely upon the arrangements of the local authorities, and upon the care of officers in command of corps for his continued preservation from this destructive practice."

157. What has been the result of that change?

The experiment was entirely successful; the troops have arrived in India in better health than under the old system.

158. Does that extend to the Queen's troops as well as to the Company's?

To the whole; the victualling of the Queen's troops is confided to the East India Company from London to India.

159. Earl of *Ellenborough.*] Has there not been a great change with respect to the establishment of canteens?

Yes, the establishment of canteens was antecedent to the year 1834; they have been greatly extended since that time; doubts have been suggested as to whether those canteens are now beneficial, or the reverse.

160. Did not that measure of establishing canteens originate with Lord William Bentinck, and the equalization of the allowances also?

Canteens were established before Lord William Bentinck's arrival; the equalization of the allowances was suggested by his Lordship.

161. Did not that arise out of a Committee appointed by Lord William Bentinck?

No; that Committee had reference to European officers, not to the native troops.

162. *Chairman.*] Can you state whether this regulation for giving the troops beer instead of spirits has had any effect upon the rate of mortality?

The rate of mortality at Madras and at Bombay has greatly diminished; in the last three years of which the returns are made up, the average deaths at Madras were less than 2 per cent. per annum; at Bombay they amounted to 3½ per cent.; but in Bengal they amounted to 5½ per cent.

163. Earl of *Ellenborough.*] Are you taking into view the casualties of war?

No, only those of disease, including, however, cholera as one of the causes of death.

164. *Chairman.*] Was there any dissatisfaction amongst the troops on account of the alteration?

Not the least.

165. Is beer supplied generally to the troops in India?

Arrangements have been made for sending out very large quantities of porter to be placed in the regimental canteens at cost price and charges, in order to increase the use of porter in preference to spirits.

166. How far has that been carried into execution?

Melvill, Esq.

23d Nov. 1852.

It has been carried into execution very fully at Madras and also at Bombay; hitherto the demands from Bengal have not been equal to the supply which has been sent to the other Presidencies.

167. Is any ration of spirits allowed to soldiers on service generally?

When they go upon service, spirits are carried with the troops, in order that they may have two drams a-day on payment, if they demand them; but no rations are issued as such to the men; only those who desire to consume spirits are provided with them.

168. Do you attribute the greater mortality among the troops in the Bengal Presidency to the consumption of spirits in lieu of beer, or to any other cause?

There has been great anxiety on the part of the Government to ascertain the cause; but the results have not been conclusive. It is to be observed, that the Bengal troops have been very much harassed of late years with campaigns; and we know that diseases contracted upon field service tell very much in succeeding years. Probably that may be the cause; the climate is also thought to be less favourable to European life amongst the soldiery than in Madras.

169. Can you give any comparative statement of the mortality in Madras and Bombay, amongst the troops, before and since the establishment of the substitution of beer for spirits?

Yes, I can furnish the Committee with such a return.

170. Earl of *Ellenborough.*] Would not the mortality in recent years, at Bengal, be very much affected by the mortality which has taken place at Kurnal?

Kurnal has been given up eight or 10 years.

171. Would it not, at that period, have been greatly affected by the mortality at Kurnal?

No doubt; the mortality at Kurnal, during the later years of its occupation, was very great.

172. *Chairman.*] How long has this change been in operation, of the substitution of beer for spirits?

On ship-board it was commenced in 1837-8. Supplies of porter for the Bengal troops have only been indented for in the last two years.

173. But it has been established much longer than that in Madras?

Yes.

174. Have you any statement which you can furnish to the Committee of the number of years in which a European regiment in the Company's service is renewed?

I could readily furnish that. The average decrement from all causes, viz., deaths, invalidings, discharges and removals to other employments, was, I believe, about 12 per cent. at one time; it is now about 10 per cent. for the three Presidencies.

175. Viscount *Gough.*] How long back was it 12 per cent.?

Eight or ten years ago. In recruiting, we calculated that we should require 12 per cent. to keep up the number.

176. In the Company's service?

In the Company's service; and, I believe, in the Queen's service also.

177. *Chairman.*] Have any other measures been taken to improve the condition of the European troops?

Yes, I may specify some important measures; the grant of commissions to warrant officers of long and meritorious service; and also the grant of commissions to non commissioned officers who have distinguished themselves in action with the enemy; and there have been also the grant of good conduct pay, and medals for distinguished conduct. Great improvements have been made in their barracks, bedding, hospital comforts and schools; libraries have been established; punkahs placed in their barracks; their pack, to the weight of 40lbs., is carried for them on the line of march; baths have been constructed for them at most stations; the means of daily ablution have been rendered more complete. Hill stations have been established for barracks, and for convalescent hospitals.

178. Lord

P. Melvill, Esq.

23d Nov. 1852.

178. Lord *Broughton*.] Since when?

Since the year 1834; these improvements have all been introduced during the present Charter.

*179. *Chairman*.] You have stated that the Queen's troops receive double pay in India?

The officers of the Queen's troops receive Indian allowances in addition to British pay; but the rate of pay to the soldier very slightly exceeds that which the Queen's rates would give at a conversion of 2*s.* 0⅓*d.* to a rupee.

180. What has been done for the Native troops during the period of the last Charter?

I may mention, that two orders of honorary distiuction have been established for the native troops, called the Order of British India and the Order of Merit. The Order of British India is for native officers of long and honourable service; it has two classes of 100 each. The first class comprises 100 Subadars, with an allowance of two rupees a-day each; second class 100 native officers with one rupee a-day each. The Order of Merit is for soldiers of all ranks who have distinguished themselves by personal bravery. There are three classes in that Order; the first class receive full pay in addition to ordinary pay and pensions; the second class, two-thirds in addition; and the third class one-third, carrying with it also an addition to the pensions they have on retiring.

181. What do you mean by "full pay"?

The Sepoy would receive seven rupees a month, in addition to his seven rupees which he receives as a soldier; it is double pay.

182. Earl of *Ellenborough*.] Is the number of persons who may have the Order of Merit, unlimited?

It is.

183. Lord *Stanley* of Alderley.] When was it established?

In the year 1837.

184. Are there very numerous cases in which that is given?

I believe so; but I have no accurate return of the number.

185. How many are there of the Order of British India?

That is a limited number, 200; 100 of each class.

186. *Chairman*.] Who has the power of conferring those orders?

The Governor-general of India.

187. That applies both to the officers and the soldiers?

To the whole.

188. You stated that the pay and allowances of the Native troops in the three Presidencies have been equalized; when was this done?

This very important change was adopted in the year 1837. The pay, batta and pensions of the three Presidencies, prior to that time, differed materially; those differences were seriously inconvenient when the troops met on service. To cure this evil, the allowances and pensions were equalized prospectively, without affecting the pecuniary interests of any man then in the service; the Bengal scale was made the standard for the whole of India.

189. Was the Bengal scale the highest or the lowest?

It was in some respects higher, but in most respects lower than that of Madras. Any advantages which it gave to the men on the Madras and Bombay Establishments were given immediately; but the disadvantages were to come into operation only as regarded new men subsequently entering the service.

190. Lord *Elphinstone*.] You said that no man who was actually in the service was injuriously affected by that order. Were not the Madras troops who were then at a full batta station when a relief took place under this order, placed on half-batta, affected by it?

I stated that the pay, batta and pensions were granted prospectively in such a way as that no individual in the service was injured by this arrangement; but I would explain to the Committee, that there were certain stations in Central India, chiefly the stations of the subsidiary forces, at which this peculiarity obtained; viz. that they were allowed to receive full batta during their residence at those stations; whilst in the Bengal army, the regiments, as soon as they arrived at their quarters, ceased to draw extra batta. It was desired that at Madras the Bengal system should be introduced at the next relief; that is, that when the regiments at Hyderabad or at Nagpoor were changed, then the Bengal system should be introduced. That part of the arrangement certainly did affect men then in the service, and gave rise at the time to much dissatisfaction. In consequence, the Government gave compensation for the difference in the price of rice to the men stationed at those places, and under that arrangement which was made when Lord Ellenborough was Governor-general, the whole of the dissatisfaction ceased.

191. Then the price of their provisions was dearer at those stations then at the stations within the limits of their own Presidency?

The price of rice was greater considerably at those stations; and compensation was given upon that principle.

192. *Chairman.*] Has the equalization of the pay, batta and pensions completely taken place?

It has taken place to a very great extent There are perhaps not more than one-sixth of the men now in the service who receive a higher rate of pay, or batta than the remainder of the regiments; so that only to that extent it remains incomplete.

193. Lord *Elphinstone.*] Were not the men of the Madras army who proceeded on foreign service, so far affected by the alteration, that the pensions paid to their widows in case of their death on foreign service, were less under the new regulation than they had been under the old?

The diminution of the pension was to come into effect only with reference to men subsequently entering the service. It was the understanding, that no man then in the service should be placed in a worse position, either himself or his family, than he was in under the existing regulations.

194. But was it not the fact, that it was not at first so understood; and that it was the occasion of considerable discontent on the part of two regiments who were ordered to embark for China?

Yes; but that was afterwards explained.

195. That was afterwards rectified by an order of the Governor-general?

It was.

196. *Chairman.*] Have any other advantages been granted to the native troops during the present Charter?

Yes; there have been several, which I will enumerate. Good conduct pay has been granted to every Sepoy after 16 years' service; and again after 20 years' service; the pay of Jemadars of infantry regiments has been raised; the pensions for wounds received in action with the enemy, have been increased; the pensions to the heirs of native soldiers killed in action, have been increased; the rules granting them priority of hearing in the Judicial Courts have been revived and made more complete; and they have been granted compensation for the high price of provisions, when the cost of food exceeds a certain sum.

197. Earl of *Ellenborough.*] Has it not likewise been held, that a soldier crossing the frontier and dying in an Indian hospital shall be deemed to have died in a foreign country?

Clearly; and that his heirs in consequence should receive a pension. In addition, the Bengal Sepoys have been granted hutting-money on change of their quarters, and their letters from and to their friends now pass free; and various minor arrangements have been made calculated to add to their comfort.

198. *Chairman.*] Have the Native troops been deprived of any advantages?

With the exception which I have just mentioned, with regard to batta at the subsidiary stations, no native in the service has been eprived of any advant age which was authorized at the time when he entered it.

199. Has any alteration been made in the system of furloughs for the officers?

No change has been yet made. The subject has undergone great consideration, both here and in India, with a view to increasing the number and diminishing the duration of furloughs; and also of allowing part of the time to count as service

P. Melvill, Esq.

23d Nov. 1852.

service in India. But there has been a great diversity of opinion as to allowing the retention of office during absence.

200. All that has reference to the future?
Yes.

201. But with regard to the actual state of things, nothing has been done upon the subject?
Nothing has been done.

202. What is now allowed as to furlough?
After an officer has served in India 10 years, he becomes entitled to furlough on private affairs for three years, during which he receives the pay of his rank. If he holds a staff appointment, he relinquishes it from the date of his embarkation from India for England. If he does not remain absent the whole of the three years, he is allowed the benefit of the difference, in the event of his being again allowed furlough on private affairs. That is, if he has returned, say one year before the time, he is allowed pay for one year of any subsequent furlough on private affairs. He may, if the state of his regiment will permit of it, have a second furlough on private affairs.

203. After the expiration of what period?
There is no period fixed; but if he has drawn pay for three years' furlough on private affairs he can only have a second furlough on private affairs, as a matter of indulgence and without pay.

204. When you say, "if the state of his regiment will permit of it," you mean, if there should be an ample number of officers present with the regiment?
Yes.

205. Is going home on sick certificate reckoned as going home on furlough?
It is called going on furlough on sick certificate.

206. What are the regulations as to that?
When an officer loses his health, it is in the power of his medical attendant to prescribe one of three courses for change of climate; first, a change to the Hills; secondly, a change to the sea; and thirdly, a change to Europe. If the medical officer prescribes a change to Europe, he is granted furlough for three years, with the pay of his rank.

207. Lord *Elphinstone.*] Is that in addition to his furlough on private affairs for three years?
Of course, if prescribed by the medical authority.

208. *Chairman.*] Then, in point of fact, he might be six years absent from India?
That does sometimes happen. He must return, and if he is then sick he may have furlough for three years immediately.

209. Earl of *Ellenborough.*] Does it not sometimes happen that an officer returns and remains about a fortnight in the country, and then leaves it again for England?
That has happened.

210. *Chairman.*] Can you state what is the average number of furloughs and the average number of sick certificates granted in a year?
The average would be about one-third of those now on furlough.

211. What is the number on furlough?
The number on furlough on private affairs is 168, and on sick certificate 523; making a total of 691.

212. Earl of *Ellenborough.*] Do you include the Colonels?
They are not included.

213. Lord *Stanley* of Alderley.] What is the meaning of a change to sea?
The medical man prescribes a voyage to sea; he says, "You should go to the Cape of Good Hope," or "You should go to New South Wales, and you shall be absent making those voyages and residing at those places for, say, two years."

Melvill, Esq.

23d Nov. 1852.

214. Lord *Wharncliffe.*] Are the present regulations as to furlough the same which subsisted before the overland route was established?
They are.

215. No alteration has taken place since the establishment of the overland route?
Not any.

216. Lord *Ashburton.*] Are they the same which have existed since 1796?
The same since 1796.

217. Earl of *Ellenborough.*] Has not there occurred this inconvenience since the overland route was established, that sometimes Bengal officers have obtained furlough to Europe on sick certificate from the Bombay Government, when their own Government thought that there was not sufficient cause for it?
That has occurred.

218. Lord *Stanley* of Alderley.] Do you think it expedient that there should be some changes in the system of furloughs, in consequence of the increased facility of coming to England?
It is the opinion of the Court of Directors, I believe, that some changes should be introduced, and for that purpose it would be necessary that the law, which now requires that every officer quitting India for Europe shall vacate his office from the date of his departure, should be modified.

219. Viscount *Canning.*] Is not a distinction drawn between the absence of an officer who goes to Europe and the absence of an officer who only comes to the Cape?
A great distinction; in the one case, the officer who comes to England ceases, under the Act of Parliament, to hold office and to draw his allowances from the date of his departure from India; whereas an officer who goes on leave within Indian limits, continues to hold his office and to draw half his staff allowances.

220. How does that distinction apply to the rule as to three years' furlough on private affairs?
When three years' furlough is granted on private affairs to a European officer, he may go where he pleases.

221. If he does not go to the westward of the Cape of Good Hope, how are his appointment and his allowances effected?
He would cease to hold his office, and to draw the allowances of it.

222. Supposing an officer takes his furlough for three or any other number of years, but does not proceed to Europe, but remains eastward of the Cape, how is his holding his appointment affected by that?
He equally ceases to hold his appointment; it is only when health drives an officer from his post that he has that privilege, he remaining eastward of the Cape.

223. Lord *Sundridge.*] A substitute being appointed during his absence?
Yes.

224. Viscount *Gough.*] Is there not much more facility for an officer to return to his regiment from England in case of an emergency, than there is from the Cape of Good Hope or from New South Wales?
Far greater; he can return from England in a month or six weeks, whereas from New South Wales it may be five or six months before an opportunity occurs.

225. *Chairman.*] Has it come to your knowledge that officers have returned to their regiments in India, when they were on furlough on private affairs, when they have heard that a war has broken out in India?
Constantly.

226. Lord *Ashburton.*] Is not a plan in agitation for altering the system of furloughs?
Yes.

227. Could you submit the plan to the Committee?
I am not prepared to submit it officially, because it has never passed through all those authorities whose sanction is required to give it the stamp of authority.

228. Marquis

228. Marquis of *Tweeddale*.] You mentioned that officers are allowed sick certificates to go to the Hills; is the deduction made from their pay when they go to the Hills the same in all the Presidencies?

The same, precisely; that is, they receive one-half of their staff allowances and the whole of their regimental allowances.

229. Are not the officers both of the civil and military services in the Bombay Presidency, allowed to go to the Hills on sick certificate with a less reduction of salary than those from Madras?

I am not aware of any such difference.

230. *Chairman*.] In the statement of the castes which you have given, in Bombay and Madras the cavalry have been distinguished from the infantry, but in Bengal it has not; can you add that?

The official statement does not contain the castes in the cavalry of Bengal.

231. Earl of *Ellenborough*.] Who are meant by "Christians"?

The Christians are the drummers and fifers; they are specified as Christians in the official returns.

232. But they are, in point of fact, all half-castes?

Yes.

233. *Chairman*.] With regard to the commissariat, which you stated to be one of the expenses of the military establishment, of what class of persons is the commissariat formed?

The commissariat officers are all European officers in the Company's regiments, appointed by the respective governments; they have native establishments under them.

234. Is it a permanent appointment?

It is considered to be a permanent appointment until the officer reaches a certain rank, and then, by the rules of the service, he must return to regimental duties.

235. What is that rank?

It depends upon the rank in the commissariat which he holds; if he is a Commissary-general, he may remain till he becomes a general officer; if he is a deputy, till he becomes Colonel; if assistant, till he becomes Major, and so on.

236. Earl of *Ellenborough*.] In fact, very few retire on account of attaining that rank?

It is not frequent.

237. *Chairman*.] Are there any Europeans under them?

They have European overseers, conductors and persons of that class; warrant officers.

238. Are they paid entirely by salary, or have they any share of profits?

They are paid exclusively by salary, and are strictly forbidden to participate in any profits.

239. Are the Natives employed under them formed into a regular corps?

No; they are merely employed in the offices, or as Gomashtas, and as purchasing agents who are sent with detachments.

240. By whom are they appointed?

They are appointed by the commissariat officer; he appoints his own native establishment.

241. With regard to the Ordnance Department; who has the conduct of the Ordnance Department?

The supervision over the Ordnance Department rests with the Military Board; they have under them Commissaries of Ordnance, who are attached to the several magazines; and who report to the Military Board, and receive orders from them.

242. Are those Natives or Europeans?

They are European officers of Artillery.

243. Is the department entirely composed, with that exception, of Natives?

Every magazine has one or two warrant officers attached to it, he being a European;

European; they have also Natives in the various branches required in the duties of an arsenal.

244. Are those warrant officers taken from the different regiments?
They are taken from the Artillery, mostly, and some from the European Infantry.

245. Under what class of force do you state the Engineers?
The Engineers are stated separately; they having no soldiers with them, except Sappers and Miners. The Engineers are employed in the execution of public works in circles and divisions of the army, and in superintending others who are so employed.

246. What class of persons are the Engineers?
They are officers of the corps of Engineers.

247. What is the number of the corps of Engineers?
The fixed establishment of Engineers in Bengal is 92; there are 46 in Madras, and 46 in Bombay.

248. Have they any European Sappers and Miners under them?
They have as non-commissioned officers, European Sappers and Miners, men who are educated at Chatham for that purpose; they are employed as non-commissioned officers to the Native Companies of Sappers and Miners.

249. Earl of *Ellenborough.*] What is the strength of the Sappers and Miners now?
There are 10 or 12 companies of 100 men in each; there are about 1,000 to 1,200.

250. *Chairman.*] Have they any Native officers?
They have the usual complement of Native officers, in addition to European Officers.

251. Are they paid at any higher rate than the others?
The rate of pay is the same as the Infantry; but they receive working pay in addition.

252. Earl of *Ellenborough.*] Are not the Engineers in point of fact in time of peace entirely employed as Civil Engineers?
Entirely.

253. The corps being distributed over the country in superintending civil works, is it not difficult to get a sufficient number together when required for the army; and is not much time required for doing it?
I am not aware that any difficulty has been experienced in procuring the requisite number of Engineer officers; they are taken away from their other employments.

254. *Chairman.*] Are the Engineer officers appointed in the same manner as other cadets?
The Engineer officers are the *élite* of Addiscombe.

255. Lord *Elphinstone.*] You say there are 10 or 12 companies of Sappers and Miners; do you mean for the whole of India?
For the Bengal army only; there are six companies at Madras, and four at Bombay.

256. *Chairman.*] Are there any great advantages attached to their employment as Engineers?
The great advantage is this, that every Engineer is sure of a staff appointment.

257. Is promotion more rapid in the Engineers, than in the other departments?
Certainly not; it is rather slower; because it is a longer seniority list; they all rise in one line.

258. Lord *Stanley* of Alderley.] Do they get any additional pay or allowance when employed on civil duty?
They get staff allowance, in addition to their regimental allowance.

259. Marquis of *Tweeddale.*] Have not the authorities in India expressed an opinion

opinion that there is not a sufficient number of Engineer officers for the duty they have to perform?

Yes; they have expressed that strongly; and the Home authorities have called upon Lord Dalhousie to state to them, what in his opinion is the required addition, to render the establishment efficient.

260. *Chairman.*] How is the medical staff appointed?

There is an establishment of 750 medical officers.

261. Is there one for each regiment?

There are for a European regiment, three; for a native regiment, one; there are also various stations at which you require to place a medical officer, and the establishment is adequate to all those objects.

262. How are they appointed?

They are appointed to regiments or to particular stations by the Governor or the Commander-in-Chief.

263. How do they get their appointment?

They receive their appointment in England, from the Court of Directors.

264. What education are they required to have?

They are required to produce a diploma as surgeon from the Royal College of Surgeons of London, or the College of Surgeons at Edinburgh, Dublin or Glasgow; they are also required to pass an examination in medicine before the examining physician; and several other arrangements are made to ensure their possessing various miscellaneous qualifications.

265. To what pay are they entitled?

They are entitled to the pay and allowances of a Lieutenant from the time of their arrival; and if they are placed in medical charge of a corps, they receive staff allowances in addition.

266. Marquis of *Tweeddale.*] Are there any natives belonging to the Medical Department?

There are; and many now belonging to the Medical Department have been instructed in the medical colleges established in India for the instruction of Natives in medical science.

267. To what rank have they risen?

In Bengal they rise to the position of Sub-assistant Surgeon, receiving an allowance of 150 rupees a month; at Madras at present the highest position is that of Native First Dresser, I believe.

268. Who are the apothecaries?

The apothecaries are Anglo-Asiatics.

269. There are native half-castes employed in the Medical Department?

There are.

270. Viscount *Gough.*] Does it not frequently occur, when detachments are sent away on service, that Native regiments are left without any medical assistance whatever?

There may have been instances of that kind on a sudden emergency; but the regiment would be immediately placed under the medical charge of another surgeon at the same station, in addition to his own charge.

271. Earl of *Ellenborough.*] Does not it also sometimes occur that a medical officer, after having been stationed during a great part of his residence in India at a civil station where he could not have any practice, is sent back to his regiment without being competent to perform his duties.

There are instances of that, but the regulations guard against this evil, by requiring that Assistant Surgeons holding civil surgeoncies, shall vacate them on promotion to be Surgeons.

272. Viscount *Gough.*] The establishment consists of a Surgeon and an Assistant Surgeon to a regiment; does not it?

Yes; but in practice there is ordinarily one Surgeon or one Assistant Surgeon present with a native regiment.

P. Melvill, Esq.

23d Nov. 1852.

273. Lord *Stanley* of Alderley.] Are there native assistants attached to the medical superintendent of each regiment?
Not attached as assistants to any regiments.

274. *Chairman.*] In point of fact, what is the medical staff of a regiment going on service?
For a Native regiment, one Surgeon or one Assistant Surgeon.

275. Is that surgeon a European or a Native?
A European officer. With a field force, extra medical officers would be sent, to form a field hospital.

276. Are any Natives besides attached?
They have for hospital duties what are called "Native Doctors" or "Native Dressers;" they have persons of that class; but the medical officer of a Native regiment has no other assistance in the performance of his medical duties.

277. Earl of *Ellenborough.*] Is it not the fact that many of those Native doctors are persons of great experience and knowledge, and inspire great confidence?
There is no doubt of it, as respects those who have been educated in the Medical College.

278. Marquis of *Tweeddale.*] What is the highest rank at which a Native doctor can arrive?
What is called a Sub-assistant Surgeon; that is the highest recognised rank in the Company's service.

279. Viscount *Gough.*] Has not that only been within a few years, since some young Natives went out from England who had come here for medical education?
It has only been since they graduated in the College at Calcutta, and obtained high distinction there.

280. Lord *Stanley* of Alderley.] Considering the medical skill shown by the Natives, and the confidence which it appears exists in their practice, are you of opinion that it would be expedient to attach a Native medical officer to each regiment as Assistant Surgeon?
There can be no doubt that it would be an addition to the medical strength of the regiment. Authority has been already given to appoint a few Sub-assistant Surgeons to corps experimentally; if carried out generally it would involve considerable expenditure.

281. Is the increased expenditure the only objection that occurs to you to elevating the Natives to those posts?
I am not aware of any other.

282. *Chairman.*] You have stated that the pay of those Native officers is 15 *l.* a month; what is the pay of the European medical officers?
A European officer, if in the medical charge of a Native regiment, being an Assistant Surgeon, would receive at a full batta station 42 *l.* a month; if not in charge it would be about 28 *l.*

283. Earl of *Ellenborough.*] Would not he receive something on account of his private practice in families?
Medical officers are prohibited from demanding fees for professional attendance on the families of their brother officers belonging to their own corps.

284. So that the Native doctor would receive presents from the Europeans whom he attended?
I have no doubt he would receive something from any European gentleman employing him.

285. Lord *Stanley* of Alderley.] In the cases which you mentioned, which have unfortunately happened where regiments have been without the assistance of a European medical officer, have Native medical officers remained at the post to perform those duties?
In any such case there would be Native doctors until a European surgeon arrived to take charge.

P. Melvill, Esq.

23d Nov. 1852.

286. Lord *Elphinstone.*] Are European Surgeons, in charge of Native regiments, obliged to pass any examination in the native languages?

They are not allowed to have the charge of a regiment until they have passed a colloquial examination in Hindostanee.

287. *Chairman.*] Is any encouragement given to the education of Native surgeons?

Great encouragement; at each of the Presidencies there are colleges for this purpose. The Government incur large expenditure in training young men for the medical service.

288. Viscount *Gough.*] Has it come to your knowledge that those young men who have returned from England, after being sent here to undergo medical education, have been greatly looked up to by the head of the Medical Department upon their return to India?

Yes; there were three or four individuals who attained high distinction in the hospitals in London, and who returned to India and have received honourable employment since their arrival.

289. Lord *Colchester.*] What has been their actual employment?

I believe one of them was employed in the College of Calcutta as a professor or physician. I am not quite certain of the nature of the employment conferred on the others.

290. It was not in the military service?

Not on the regular covenanted establishment.

291. *Chairman.*] Have any representations been made to the Court of Directors respecting the insufficiency of the medical attendance?

At different times such representations have been made, and they have always received immediate attention.

292. Earl of *Ellenborough.*] Was there not formerly a practice of making an allowance to a surgeon who was doing duty with a regiment for the drugs and other things?

Yes; in former times the medical officer had the contract for the supply of country medicines and hospital comforts. That contract was abolished some 24 years ago, and all those supplies are now made by the public.

293. Was not the result of the withdrawal of that contract a very great diminution in the emoluments of the medical officers?

Yes, especially of those in charge of European regiments.

294. So as to make a medical appointment in India no longer very much worth the consideration of a medical man?

So as to diminish the value of the appointment greatly, but not by any means to make it unworthy the attention of those who have received a high education in England.

295. Have you anything to do with the indents?

The indents pass through my office; they are sent to the office of the Inspector of Military Stores.

296. You only receive them and forward them?

I receive them and forward them, and on their return to me, I bring them under the consideration of the Court of Directors.

297. *Chairman.*] With respect to the Ordnance, I believe the Ordnance Department makes all its artillery in India?

The whole of the brass ordnance required for the army in India is cast in Calcutta. The iron guns are cast in England, and all the iron shot is sent from England.

298. The powder?

The powder is all manufactured in India. They have an establishment in each Presidency for the manufacture of it.

299. Earl of *Ellenborough.*] All the gun-carriages are made in India?

They are.

P. Melvill, Esq.

23d Nov. 1852.

300. *Chairman.*] Are there any establishments for making small arms in India?
No; all the small arms are sent from England.

301. Earl of *Ellenborough.*] They can alter them in India?
They can alter them and repair them.

302. Are all the regiments in the service now armed with percussion muskets?
The whole of the regular army.

303. How long have they been so?
It has been a gradual process, and the last of the regiments has only just been so equipped.

304. Marquis of *Tweeddale.*] Have not complaints been made by the Sepoys of the weight of the muskets?
At different times such complaints have been made.

305. Earl of *Ellenborough.*] Do they make the gunstocks in India now?
The gunstocks are all made in this country; the arms are sent out completely equipped.

306. Where are the shoes made?
The shoes are made in India.

307. Do they answer?
There have been no complaints of them.

308. It is Madras leather which is used?
The Madras leather cured at Hoonsoor is considered to be very good; we have not sent shoes to India for many years.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next,
One o'clock.

Die Jovis, 25° Novembris 1852.

LORDS PRESENT:

The Lord PRIVY SEAL.
Earl GRANVILLE.
Earl of ELLENBOROUGH.
Viscount CANNING.
Viscount GOUGH.
Lord Bishop of OXFORD.
Lord ELPHINSTONE.

Lord COLVILLE of Culross.
Lord WODEHOUSE.
Lord COLCHESTER.
Lord WHARNCLIFFE.
Lord ASHBURTON.
Lord STANLEY of Alderley.

THE LORD PRIVY SEAL in the Chair.

Evidence on the Government of Indian Territories.

LIEUTENANT-GENERAL SIR WILLOUGHBY COTTON, G.C.B., is called in, and examined as follows:

Lieut.-Gen. Sir W. Cotton, G.C.B.

25th Nov. 1852.

309. *Chairman.*] YOU served for a considerable time in India?
I did.

310. You served in the first instance in the Bombay Presidency?
Yes.

311. Before you were Commander-in-Chief?
The first period of my service in India was at Bombay; I was a Colonel in the army when I went out, and commanded at Poonah, and when the Ava war broke out, I was ordered to proceed to Calcutta and thence to Rangoon; at that time I held the rank of Brigadier-general. On my arrival at Rangoon I was placed in command, by Sir Archibald Campbell, of the Madras troops, the General Officer having from ill-health at that moment retired from it, and I held that command till the treaty of Yendaboo, and afterwards till its evacuation by the army, except that part of it that went to Bombay. After the treaty of Yendaboo, Sir Archibald Campbell proceeded to Calcutta, and left me in command of the army in Ava, with instructions relative to their re-embarkation for Madras, and also for Bengal, leaving the proportion which was supplied by the Bengal Government, for the occupation of the post called Moulmein, opposite Martaban. After those orders were executed, I was commanded to return to Calcutta, where I was placed by Lord Combermere, who was Commander-in-Chief, to act as Quartermaster-general of the King's army, General Wittingham having been promoted to the rank of Major-general. I held that appointment for one year; then the Queen's Adjutant-general of the army, Colonel Macdonald, died; and I was transferred from the Quartermaster-general's Department, and placed as Acting Adjutant-general of the Queen's troops, which office I held until relieved by Colonel Torrens from England, three months previous to my getting the rank of Major-general. The second period of my service in India was in the year 1837; I was ordered out as Major-general on the staff, and on arriving at Calcutta, was appointed to the command of the Presidency division; on the army of the Indus being formed, I was appointed by the Commander-in-Chief and Governor-general to command the first division of the army of the Indus; the force having been reduced from its original strength, Sir Henry Fane, who had been appointed Commander-in-Chief of the whole of the army proceeding to Affghanistan, did not go, but placed me in charge of the whole Bengal force,

Lieut.-Gen. Sir W. Cotton, G.C.B.

25th Nov. 1852.

with orders to take them across the Indus, and place myself under Sir John Keane's commands, who came up from Bombay with a large portion of troops from that Presidency. I proceeded accordingly, and after crossing the Indus, I judged it necessary to occupy the Boolan Pass leading to Candahar, and wait there for Sir John Keane. This was done, and I remained 12 days at Quetta till he arrived, and afterwards he took the command of the combined force and proceeded to Candahar, and then came the storming of Ghuznee, and also the action before the occupation of Kabul. After Sir John Keane went away, I remained in command of the army that was left in Affghanistan, till I was relieved by Major-general Elphinstone; my health had suffered, and I proceeded on sick leave to England; I remained in England till I was appointed in the year 1846, Commander-in-Chief of the Presidency of Bombay, where I remained till Sir William Gomm was appointed to succeed Lord Gough as Commander-in-Chief; as I was a senior officer to Sir William Gomm, and had served longer in India than he had done, I did not conceive it consistent with my military character to remain there and serve under him, and I consequently applied to be relieved.

312. Have you had opportunities of forming a judgment upon the state of the army in the different Presidencies?

Yes, during the time I have had the honour of serving in the different corps, I have had such opportunities.

313. Have you any observations to offer upon the comparative state of the army at the time you were first at Rangoon, and at the subsequent period, when you were in the Affghanistan campaign, and when you were Commander-in-Chief in Bombay?

Your Lordship is aware that in the Ava campaign there were no Bombay troops, excepting a small portion of artillery, employed, and consequently, the only point I can mention to your Lordships is with regard to the Madras troops, which I had the honour to command during the period of the Burmese war, and also with regard to the portion of the Bengal army that was in co-operation with us.

314. Did the army generally appear to you to be in a better condition in the latter period than in the former period?

The Bengal troops were under the immediate command of Sir Archibald Campbell; he called himself commander of the first division; that included the whole of the Bengal troops, and I always understood they were in very good order; I never heard any complaint whatever relative to them. The corps which came from Bengal I can answer for; they were in most excellent order.

315. I wish to draw a comparison between the state of the Indian army in your first campaign, and subsequently?

There were no Madras troops employed in the Affghan war; but I can speak more particularly to the Madras troops employed in the Ava war, because they were under my command, and we moved by a separate road, and were wholly detached from the Bengal troops; consequently I can speak with regard to them most particularly; but the Bengal troops being removed to a great distance, and not being under my command, and I having nothing to do with them from the moment I was placed in command of the Madras army, I can only state what I always heard, that they were in a remarkably good condition.

316. Lord *Wharncliffe*.] You have had no knowledge of the Madras army since that period?

No; I never served in the Madras Presidency, and had nothing to do with the Madras troops, except in the Burmese war, and no troops could behave better than they did at that time. At the commencement they were under the greatest privations (I speak of the Native troops), both from sickness and want of provisions; but the want of provisions was remedied by the care of Sir Thomas Monro, who was the Governor of Madras, and who took every opportunity of supplying the troops from thence with everything that was necessary.

317. *Chairman*.] What was the state of the Native army in the Affghan war?

The Native troops always behaved in every way remarkably well, except upon one occasion, when the 2d Regiment of Bengal Cavalry, when ordered to charge, did not charge, and deserted their officers, who were cut up.

318. Earl

318. Earl of *Ellenborough*.] Was that after you left?
No; it was just before Dost Mahomed was taken. I detached General Sale with a body of troops to Kohistan, to meet the projected invasion of Dost Mahomed, who was coming over the Hindoo Cooch by a particular pass there; and he went, and Dost Mahomed surrendered himself the day after the charge.

319-20. *Chairman*.] In your judgment, was the army properly supplied with commissariat during the time you were in India?
In the Affghan war it was remarkably well supplied. The Bengal army was particularly well supplied; it was impossible for any corps to be better supplied with provisions than the Bengal troops were when they moved from Ferozpoor.

321. Earl of *Ellenborough*.] The troops carried three months' provisions?
Yes, and there were depôts formed in the Rajah of Bawulpoor's territory. It was so well arranged, that what we called the commissaries' bags were not opened till we passed the Indus; nothing could be better.

322. Lord *Ashburton*.] Was not that owing to the friendship of the Rajah of Bawulpoor?
He answered the requisitions that were made upon him in the most perfect manner, and depôts were formed at every march, both of forage for the cavalry, and of provisions for the Native troops.

323. Was not the supply owing rather more to his exertions than to the exertions of the commissariat?
I should conceive that the orders emanated from head quarters, which caused him to form those supplies; in fact, before I marched, I was told by the Commander-in-Chief and Governor-general, who was Lord Auckland, that I should find those supplies all the way along, and I did find them. In consequence of the conduct of the Rajah of Bawulpoor to the troops on their march, he received the approbation of the then Governor-general. It is impossible for anybody to behave better than he did in provisioning and in every way assisting the army.

324. *Chairman*.] Have you any observations to make upon the state of the commissariat generally?
The deficient supplies from the Bengal commissariat were owing to circumstances in Lower Scinde which occurred to Lord Keane, which prevented his bringing with him the requisite quantity, or receiving the number of camels which he had expected from the Ameers; he was, in consequence, obliged to draw upon me at Shikarpoor, for a very large proportion of the Bengal camel part of the carriage, and also for a very large proportion of our commissariat; and after we had passed the Indus, in moving from Shikarpoor, through the Boolan Pass to Quetta, Sir Alexander Burnes and his agents were disappointed most seriously in the collection that he had ordered to be placed upon the road for our army: the Khan of Kelat completely *manqué*'d his promise; we got nothing; and the whole way up, the supplies which we were told we should receive, we did not receive.

325. Was that owing to any fault of the commissariat, or to the nature of the country?
The country authorities in Cutch Gundava did not do what they promised the sub-agents they would do.

326. You were Commander-in-Chief in Bombay: will you state generally, whether you were satisfied with the regulations of the army, or whether you have any suggestion to make?
I have every reason to speak in the highest terms of the discipline of the Bombay army, both as it applies to the officers and to the men; the return of courts martial will bear out my remark; I do not conceive that there is a more effective army, certainly not in India, and I think I may say not anywhere, than the Bombay army; they will go anywhere; they never make any objection to embark to any place; wherever you may require a contingent to-morrow, you can send whatever number of them you please. If they are alone they will fight well, but if they are mixed with European troops, I think they are fully equal to any army in the world.

327. Lord

Lieut.-Gen. Sir W. Cotton, G.C.B.

25th Nov. 1852.

327. Lord *Wharncliffe.*] Are all the regiments in the Bombay army liable to be sent upon foreign service across the seas?
Yes.

328. Lord *Stanley* of Alderley.] They are all enlisted for general service?
Yes.

329. *Chairman.*] Where are they principally recruited?
We recruit a great many from Hindostan, and we recruit a great many from the Concan, which is the country below the Ghauts.

330. Does the system of castes prevail there?
They have their castes, but they never interfere in any way with the army.

331. Lord *Wharncliffe.*] Is there any reason for preferring the recruits from the Bengal territory, to those which are obtained from other parts of India?
The Bengal men are much finer men to look at than the Concan men; the Concan men are very small men, but at the same time they are exceedingly obedient, and they are very good men as soldiers.

332. Viscount *Gough.*] Men from the Concan country are not so peculiar with regard to their castes?
No, they are not; but now we get Bengal men of a caste that we prefer very much, called the Purdasee caste; if they had any caste before they came to us, we never heard of its interfering in discipline.

333. Earl of *Ellenborough.*] Did you find that the troops could bear equally well the heat and the cold about Affghanistan?
The cold there is very intense; and we took every precaution by giving poostoons, or sheepskin jackets, to the troops; the whole army had them, Cavalry as well as Infantry; and that totally prevented their suffering from cold.

334. *Chairman.*] Have you any suggestion to make for the improvement of the service?
Yes. I could make one suggestion upon an order that now exists, but which I think ought to be more enforced than it is, and which is of the greatest importance, in my opinion, to the army. I found when I came to Bombay several of the Native corps very sparingly officered by European officers. On sending for the Adjutant-general and looking at the different regiments that were most sparingly officered, I found that in various instances there were more officers away from the regiment on staff employments connected with the roads, tanks, revenue and survey, and different things of that kind, than was permitted by the regulations of the Honourable Court of Directors. The Court of Directors have within a few years, certainly within my first knowledge of the Bombay army, increased the number of Captains, and still it was with the greatest difficulty we could get more than two Captains present with a corps, and sometimes there was only one; for instance, if there were six Captains, two were away on staff employments, that is allowed by the Court of Directors; two were away on furlough, gone to Europe, or probably on sick certificate, which is always instantly attended to; then you are reduced to two Captains, and if anything happens to one of those two, there is a corps of 800 men with only one Captain. Then the leaves of absence have been very common. The Commander-in-Chief is called upon by the Government to give up an officer, who is mentioned by name, and it is a very unpleasant thing for the Commander-in-Chief to be obliged to say to the Government, "I am exceedingly sorry, but I cannot in justice to myself recommend that Lieutenant so-and-so should leave." That may be answered, by saying that the Military Secretary to Government ought to have gone into that matter, and have seen that the regiment had its quota, otherwise he should never have brought the question at all before the Government. There is truth in that, but I certainly do think that the order of the East India Company should be particularly attended to with regard to the number of officers present with their regiments, because I do not conceive that 800 men with one Captain is a proper state of things to subsist.

335. Earl of *Ellenborough.*] How many officers do you consider necessary for a regiment in the field?
If a regiment comes to take the field, all the Captains on the staff employments are immediately ordered to join, but that takes place very seldom. Still

Lieut.-Gen. Sir W. Cotton, G.C.B.

25th Nov. 1852.

347. But I refer, for instance, to regimental local corps?

The irregular corps are filled up by recommendations of the Governor; the Adjutant and the second in command are recommended by the Commander-in-Chief.

348. In order to fill up appointments in the Judge Advocate's Department, officers are taken away from their regiments?

Those appointments are with the Commander-in-Chief.

349. *Chairman.*] In point of fact, the commanding officers of regiments have nothing to do with the recommendation of officers sent away from regiments?

No; they do not recommend that officers should be sent away. The Governor sends the names of certain officers, and asks if the corps can spare them, and sometimes if the full number of officers that are allowed by the regulations to be absent from the regiment are absent, the Commander-in-Chief writes to the Governor to say, that he begs to inform his Excellency that there is the full number of officers that is allowed, now absent from the regiment; and then, if the Governor chooses to press the appointment, he makes it what is called a special case. He says, this man is particularly required for the Revenue Department. I recollect an instance of that kind, where the Governor made it a special case, and he took then the onus upon himself.

350. Viscount *Gough.*] Is it the rule, that before any officer is removed from his regiment for a staff appointment, the Secretary to the Government writes to the Commander-in-Chief to inquire whether there is any military objection to the appointment of that officer to the position in which the Government wish to place him?

The Secretary of the Government writes by order of the Governor to say, that Lieutenant so-and-so is considered particularly fitted for a certain appointment, supposing the number of officers with the corps will admit of it.

351. Lord *Stanley* of Alderley.] From your experience in the service, what is the opinion you have formed of the comparative merits of the Regular and Irregular Horse?

I think the Irregular Horse are a most efficient and useful arm of the service.

352. Do you consider the Irregular Horse upon the whole to be superior to the Regular Horse; should you be disposed to any extent to increase the number of the Irregular Horse and diminish the number of the Regular, or would you retain the proportion that now exists?

You must always have with every large army a proportion of Regular Cavalry, but I should certainly think that every general officer would try, if he had an army upon a large scale, to have an Irregular Cavalry, as many as could be spared to him, for they are a most efficient arm of the service.

353. *Chairman.*] What is the comparative expense of the Regular and Irregular Horse?

I cannot say; the irregular man is usually hired at so much a month for himself and his horse; the Poonah Horse are about 30 rupees a month, man and horse, but I believe the rate is different in Bengal; there is one point which, perhaps, I might take the liberty to mention, which persons in the Regular Cavalry in the Bombay Presidency very often spoke to me about; it may be one reason why the Irregular Cavalry, in my idea, would be more effective in a campaign than Regular Cavalry; they do not like the straight sword; a native is, from his infancy, used to the sabre, and he cannot cut with the straight sword; and I conceive it would be of the greatest possible advantage (but not being a Cavalry officer, I speak with very great deference) to get rid of the straight sword.

354. Earl of *Ellenborough.*] Do they complain of the saddle also?

Yes.

355. Lord *Stanley* of Alderley.] Is it your opinion that the attempt to assimilate the arms and manner of riding to the European, is on the whole prejudicial to the efficiency of the service of the Cavalry?

Our saddle does not suit them, I believe, and certainly the straight sword does not suit them; if a Cavalry officer says to them "give point," they do not understand giving point; the sword is heavy for them, and besides that, their usual mode of attack and defence is by the sabre.

356. And

Lieut.-Gen. Sir W. Cotton, G.C.B.

25th Nov. 1852

356. And you consider that the mode of riding common in European regiments is not adapted to the Native cavalry?
They do not like it; if you put a Native upon a horse, he will sit in a very different way from a man in a British regiment.

357. It is your opinion that both with respect to their mode of riding and their arms, they would be more effective men if you left them to the system they have been accustomed to?
Certainly.

358. *Chairman.*] Had you any opportunity of judging of the Artillery service?
I have seen it employed in campaigns, and it is impossible to be better, now that they have got rid of the bullocks. I conceive the Artillery service to be most efficient; I have always found it so, but the Horse Artillery of the Bombay army and the Horse Artillery of the Bengal army are differently armed and differently manned; in Bengal every horse has a man upon it, and in Bombay our Horse Artillery are exactly upon the same footing as the English Horse Artillery; they drive in hand.

359. Lord *Stanley* of Alderley.] Is it your opinion, reverting to the question which was formerly asked relative to the arms and mode of riding of the Irregular Cavalry, that in the Regular as well as the Irregular corps, the native arms and the native mode of riding should be adopted in preference to the European?
I think it would be very much to the advantage of the service if it were adopted.

360. Earl of *Ellenborough.*] How should you like to command a regiment of Irregular Cavalry mounted upon the horses of Regular Cavalry?
I never considered that matter.

361. Viscount *Canning.*] Respecting the Medical Department of the Indian army upon which you have been asked, were you satisfied with the organization of it at the time you were in India?
I think it is perfectly efficient; the last time that I was there, I was better able to judge, as Commander-in-Chief, and it appeared to me to be in a high state of efficiency, and I found no scarcity of medical officers such as I had heard of in this country; on the contrary, every regiment was fully supplied with medical officers.

362. Does that apply both to the European corps and the Native corps?
Yes.

363. The European corps are furnished with a larger proportion of medical officers than the Native corps?
The European corps have three Assistants, and the Native have two; that is, the establishment consists of two, but there is only one generally.

364. What is your experience of the aptitude of Natives to fill the position of medical officers?
There are native Assistants, in all the hospitals, and Native Apothecaries, and I never heard any complaint against them; on the contrary, I believe they are very efficient as far as their science goes, and walking the hospitals; but as I mentioned before, in the Bombay Presidency the regiments are particularly well supplied with medical officers, and therefore I never heard of any regiment yet that was obliged to call upon the Native Doctors to do anything further than their usual duty.

365. Are you of opinion that the Hindoos have a peculiar aptitude for the practice of surgery?
I have heard that they have; I can only speak from hearsay, but I have always heard that they are very efficient in that department, and the Apothecaries very attentive in every way.

366. Do you think that full advantage is taken by the authorities of the efficiency and aptitude of the Natives for those duties?
I am confident that every proper feeling is shown to them by the authorities.

Lieut.-Gen. Sir W. Cotton, G.C.B.

25th Nov. 1852.

367. You do not think that there is room for a more extended employment of Natives in that department of the service?

Every regiment has a certain establishment, a Surgeon and two Assistants, and a certain number of Apothecaries who are attached to the hospital; they are always kept up to the full establishment.

368. Lord *Stanley* of Alderley.] You have never known any instance where there was a deficiency of European officers in the Medical Department?

No, never.

369. *Chairman.*] From what class of men are the Irregular Cavalry recruited?

It depends upon where the corps is raised; if they were to be raised in the Punjaub, an officer would be selected by the Governor-general to command, and he would be told to raise a corps of Irregular Cavalry; then he would select men who were of the class of soldiers, who would keep themselves and their horses, and they would receive so many rupees a month; this officer is answerable for the selection he makes, and taking India throughout, there are always men to be found fitted for Irregular Cavalry corps, men who are used to the saddle, in the Upper Provinces, and also in the Mahratta country.

370. Lord *Colchester.*] Is not the cavalry soldier of a higher class than the foot soldier, in reference to their previous occupations; has not the foot soldier generally been a cultivator of the ground?

Yes.

371. With reference to the horse soldier, has he generally subsisted by cultivating the ground, or is he a man of a higher class?

The men who enter an Irregular Cavalry corps are men of better families; they are generally Mahomedans.

The Witness is directed to withdraw.

Lieut.-Gen. Sir G. Pollock, G.C.B.

LIEUTENANT-GENERAL SIR GEORGE POLLOCK, G.C.B., is called in, and examined as follows:

372. *Chairman.*] DID you begin your career as an Artillery officer?

I did.

373. Do you consider the system of the Artillery in India to be such as to render it a very efficient arm of the service?

I consider it very efficient in one respect, but I think there is a great deficiency of officers in the Artillery.

374. By "officers," you mean European officers?

Yes.

375. Has the number of officers been increased of late years?

Not of very late years.

376. Is the deficiency of which you speak owing to the establishment itself being too small, or to the drafts which are made from the Artillery service for other purposes?

I should say the establishment is not large enough; it requires an increase to the regiments, there are not officers enough to perform the duties.

377. Earl of *Ellenborough.*] How many officers have you usually present with a battery?

Not more than two, I think; when they are going on service, of course every officer who could be, would be brought into the field.

378. *Chairman.*] What is the usual number brought into the field?

There ought to be five to a troop of Horse Artillery.

379. Earl of *Ellenborough.*] To six guns?

Yes, but they are never present; there is always somebody on furlough or sick leave; there are seldom more than two or three officers.

Lieut.-Gen. Sir G. Pollock, G.C.B.

25th Nov. 1852.

380. *Chairman.*] Have you formed any definite idea of the number that there ought to be?

There ought to be a Captain, two first, and two second Lieutenants.

381. That would, in your opinion, be sufficient?

Yes.

382. Earl of *Ellenborough.*] If you began with five, you would be reduced to three before any considerable time had elapsed?

Yes, that is very likely.

383. *Chairman.*] But if you have three, that is in your opinion a sufficient number?

Yes, five.

384. Lord *Wharncliffe.*] Has the Artillery service in your opinion suffered in the field from the paucity of officers?

I should say it has, but it has been so for 40 years; I recollect when I was a subaltern myself, we were on duty night after night in the trenches without any relief.

385. Are there any regulations laid down by the Government with respect to the numbers that are expected to be on duty?

Yes; it is laid down in the regulations that there should be a certain number of officers present.

386. Are those regulations adhered to, or are they disregarded?

They are adhered to as far as I am aware, but I have not been with the Artillery for the last 12 or 14 years.

387. *Chairman.*] But you have opportunities of judging?

A number of them go to staff appointments, and their places are not filled up by other officers, so that very often a Lieutenant is commanding a whole battery of six guns.

388. Is there any other suggestion you would make for the improvement of the Artillery service except an increase of officers?

I believe more men are required for the service.

389. Europeans or Natives?

Europeans.

390. Lord *Colchester.*] Do you mean that there is not a sufficient number of men in proportion to the number of guns?

I think not, looking to the requirements of the service; I think there is a great difficulty in getting a sufficient number of officers together, and a sufficient number of men.

391. *Chairman.*] Do you believe there is any real economy in the employment of Natives instead of Europeans?

As far as money is concerned, certainly Natives are cheaper.

392. But would not one European perform the duty of several native men?

No, I do not think he would: as far as I have experience of the Artillery, the Natives are exceedingly good soldiers.

393. Earl of *Ellenborough.*] Is not the most efficient part of the Native army the Artillery, in the Sikh service particularly?

Yes.

394. And even in the Mahratta service was it not so?

Yes, the battle was fought by the Artillery.

395. You met the armies of the Native Princes more on equal terms with the Artillery than with any other part of the army, did you not?

Certainly; the Natives have always fought their battles with Artillery; I fancy their Infantry is of little value.

396. *Chairman.*] Does the feeling of attachment to their guns prevail in our service, as it is said to do in the Native service?

I should say it does, decidedly; I have never known an instance of an artilleryman leaving his gun.

Lieut.-Gen. Sir G. Pollock, G.C.B.

25th Nov. 1852.

397. Have you had opportunities of judging of the efficiency of other arms of the army?

Yes; I commanded a division.

398. What is your opinion of the efficiency of the Native troops?

I think the troops in the Bengal army are very efficient, as far as I have been able to judge. I have commanded them in great difficulties, and I have always found them as good as any troops I could wish to command.

399. Are they sufficiently officered by European officers?

I think not; I think every company ought to have a Captain, which I believe they have not.

400. Is their establishment too small, or does the deficiency arise from the officers being taken off for other appointments?

From both causes: the officers are taken off for appointments, and there are not a sufficient number of Captains on the establishment. There are eight companies and there are six Captains, and the two senior Lieutenants command companies by what is called their own right, being the senior Lieutenants. Now I think a Captain ought to be appointed to command every company.

401. In your time there were only eight companies to six Captains?

I am not sure of the number; I was there at the time of war commencing, and they raised them to ten companies.

402. But they did not increase the number of officers?

No.

403. Out of six Captains to a regiment, some are taken for other appointments?

Yes, and some are on furlough; I have known regiments commanded by Lieutenants.

404 In the field or at home?

I have known it in the field a long time ago, but not very lately. I have not been so much with the Infantry as to observe it, but I recollect Lieutenant Lindsay commanding the 4th Regiment of Infantry a great many years ago.

405. When you were in command of the army in Affghanistan, did you suffer from any deficiency of officers?

The men did their duty exceedingly well; I have nothing to complain of on that score; but I conceive that they would have been better with more officers.

406. Is there any other improvement you would suggest in the discipline and management of the Native forces?

There is nothing that occurs to me at present.

407. Is the number of Native officers sufficient?

I think the number is quite sufficient; there is a Subadar and a Jemadar to every company, and I think that is abundant.

408. Have you found the commissariat generally well conducted?

I cannot say much for the commissariat. I think that the system is bad; the Government is plundered in the most awful manner; for instance, in marching, there is no control over the commissariat. You set off at a very early hour, and march for a number of hours and come to the ground, and the commissariat people are not up, and the camels do not get their food very likely during that day; they may not get it at all; but the accounts are kept in the same way as if they did get it. As an instance of the plunder which is practised in the commissariat, I can mention a circumstance which occurred within my own knowledge: a Native, before it was known whether I was to advance or retire, or what I was to do, came to the Commissary and offered him two lacs of rupees, that is 20,000 *l.*, to put him at the head of the department, merely that he might make money of it. That shows the system to be bad. Of course the thing was not attended to by the officer, and he mentioned it to me; but that was a bribe offered for the situation of head of the commissariat office.

409. Viscount *Gough.*] You allude to the Native contractors?

Yes; but it is almost all left to them, and they make money in that way.

410. *Chairman.*] Is there any check upon those appointments?

I wrote to Lord Ellenborough on the subject, but I know of no check. I

think

Lieut.-Gen. Sir G. Pollock, G.C.B.

25th Nov. 1852.

think there ought to be more European control over them; the natives ought to have less interference with it; but with reference to the contractors, they, in fact, do what they like.

411. How are the European commissaries appointed?

By the Government.

412. From any particular service, or are they to be taken from the army generally?

They are taken from the army generally; I fancy it is a matter of interest; they must know the languages, and thoroughly understand them.

413. Are they selected by the Government at home or by the Government in India?

By the Government in India.

414. Do they leave their regiments altogether, when they are appointed commissaries?

Not altogether; they are still on the strength of the regiment, and they are called upon to return whenever the regiment goes on service.

415. Who acts as commissary when the regiment goes on service?

Then they will get an officer from some other regiment which is not on service to act as commissary.

416. When once an officer gets into the commissariat service, he remains there, and rises in the service?

Yes, he generally rises in the service.

417. If he is sent back to his regimental duty, is he inefficient to the performance of it from want of practice?

I should think that he is not inefficient for his regimental duties.

418. Earl of *Ellenborough*.] If a commissariat officer were with the army in which his own regiment was serving, would he serve with the regiment, or in his capacity as commissary?

He would serve as commissary; but he would join his regiment in case of an action occurring.

419. *Chairman*.] Are the appointments of contractors entirely left in the hands of the commissary?

No, they are left in the hands of the Military Board, of which I cannot say much. I will give one instance: during the time I was at Peshawar, the companies were increased to about 100 men; a certain number of tents were allowed, so many to a company, which were 80 strong. This Board was applied to, and it was said that the companies were 100 strong, and required more tents; the Board refused the application, and said the tents were made for the company, and the company must get into them. When I wrote to Lord Ellenborough or the Commander-in-Chief, the thing was remedied at once; but that is an instance of the way in which the duty was carried out by that Board. They had the appointment, I believe, of the contractors for the commissariat.

420. How is the Board constituted?

There are two paid members, and the other two are *ex officio* members, the one being Commandant of Artillery, the other Chief Engineer; the Commissary-general is a member of the Board.

421. Lord *Wharncliffe*.] Are they all military men?

No; at one time the chief magistrate at Calcutta was one of the Military Board; but of course he knew nothing about the military duties of it.

422. *Chairman*.] Is this Military Board stationary?

Yes; they reside in Calcutta; I believe that the commissariat agents are appointed by them.

423. Lord *Stanley* of Alderley.] Is the Commissary-general an officer in the service?

Yes.

424. *Chairman*.] How does the contractor apply to the Military Board resident in Calcutta when he is at Peshawar or elsewhere?

I do not know how that is managed; I suppose he applies to a stationary officer, or some personal friend of his.

Lieut.-Gen. Sir G. Pollock, G.C.B.

25th Nov. 1852.

425. Earl of *Ellenborough.*] Is not one great inconvenience attaching to the constitution and powers of the Military Board, the very great delay in answer to the references made to them?

Yes.

426. Unless the thing is done at once on the responsibility of the Commanding Officer, there is no probability of its being done in time to be of service?

No, there is not.

427. Lord *Elphinstone.*] You served in Burmah with the Madras army; you are probably aware that the Madras commissariat is not under the Military Board?

I was not aware of that.

428. Lord *Stanley* of Alderley.] Is it your opinion that it would be better to have a separate commissariat service in India, as it is in this country, not composed of officers who are liable to be called back again into their regiments?

I think the officers are capable of undertaking the commissariat, but the Native agency is bad; there ought to be more good non-commissioned officers brought in, men who are to be depended upon; I think they would be able to control the thing much better. I would have men for every regiment, whenever the regiment came upon the ground, to superintend the feeding of the cattle. The cattle fell upon the march merely from exhaustion; they had nothing to eat; sometimes instead of three seers a day, they would not get one seer.

429. You think that it would be very difficult to get rid of the Native agency altogether, but you would require more European superintendence?

Exactly; you cannot get rid of the Native contractors altogether.

430. *Chairman.*] You stated that a large sum had been offered for the situation of commissary?

An instance occurred within my own knowledge, of a large sum having been offered for the situation of gomasta, or native contractor.

431. That was an offer made to a European officer?

Yes; it was an offer made to Major Thompson, who was in the Commissariat with me.

432. How are the troops who are not in the field supplied with provisions?

They are supplied by the commissaries with rations.

433. Viscount *Gough.*] It is optional with the soldier to buy his provisions of the commissariat, or to buy them in the market?

Yes, he may take his money instead of provisions; but soldiers live in messes, and they find it more convenient generally to take the provisions rather than the money.

434. Lord *Wharncliffe.*] Do you suppose that the frauds of which you have been speaking, or frauds of a similar nature, are in operation when the troops are in cantonment?

I have had no opportunity of seeing; but when the troops are in the field, the temptation is very great; I ought to have had 10,000 camels in Affghanistan, and each should have received three seers a day when I marched: if they got only one, which was frequently the case, and sometimes none, you may fancy what the profit was.

435. *Chairman.*] What is a seer?

Two pounds; it was all I got for a rupee, and taking 20,000 seers as the quantity kept back, two for each camel, and I should have had 10,000 camels; you will see what quantity might be stolen every day from the Government.

436. Earl of *Ellenborough.*] At the time you commanded the army, was it not difficult to provide the necessary supplies, even if the contractors had been honest men?

Yes; but still I paid for the provisions, whether the camels had them or not.

437. Lord *Wharncliffe.*] You have no means of saying whether abuses prevail in the commissariat in India under ordinary circumstances?

No; that is not a subject that I have much considered.

Lieut.-Gen. Sir G. Pollock, G.C.B.

25th Nov. 1852.

438. Earl of *Ellenborough*.] Do you think the commissariat would be better conducted if it were altogether conducted by civilians, instead of by military officers?

I think not; the military officers are capable of conducting it well.

439. Do you think a civilian would have the same authority with the army that a military officer has?

No; I do not think he would.

440. He would not be equally respected by the Colonels of regiments?

I think not.

441. *Chairman*.] Are the royal troops furnished by the same commissaries?

Yes.

442. Can you give any information about the medical staff?

I do not know that I can.

443. Generally, your suggestion is, that there is a want in the service of a greater number of European officers?

Yes; I think there is.

444. Lord *Colchester*.] Does that apply to the Cavalry equally with the Infantry?

Yes; but there is an anomaly here of which I would speak; the Irregular Cavalry regiments have no European officers, except a few selected from the general service; three to each regiment; but these regiments have unquestionably behaved very well in the field when the troop is led on. I think having European officers at the head is of great importance.

445. Are the men who compose the Irregular Cavalry of the same description as those enlisted in the regular corps?

Perhaps they are a better class; many of those in the Irregular Cavalry would not enlist into a regular corps.

446. *Chairman*.] Are they principally Mussulmen?

Yes; but they dislike the saddles which we use in the Cavalry.

447. Lord *Elphinstone*.] Do not you think the superiority of the Irregular Cavalry is partly owing to the Native officers in the Irregular Cavalry having an opportunity of rising to a higher rank than they do in our service?

Yes; perhaps it is; but still they have a small number of officers to a whole regiment.

448. Lord *Stanley* of Alderley.] Is it your opinion that the Irregular Cavalry are superior to the regular corps?

No; I should say not; we have instances where the Regular Cavalry have not behaved well, but they have behaved admirably, generally speaking; no troops could behave better than the Cavalry did in Scinde, and those were principally Regular Cavalry.

449. Earl of *Ellenborough*.] In the time of Lord Lake, no Cavalry in the world could be better than that which he commanded?

No.

450. Lord *Ashburton*.] How were they commanded?

In the same way as they are now; but I think the officers associated more with their men than they do now; I do not think the officers communicate with their men as much as they used to do formerly, and I think that is a fault.

451. To what do you attribute the change?

I do not know to what to attribute it, except that it is perhaps owing to a change in the character of the officers; perhaps they think the Natives Niggers, and talk of them lightly; but formerly, I have attended Native parties, and the Native officers associated with the officers a good deal.

452. Has the officer in command of a regiment the same authority and influence with his regiment as he had formerly?

Yes; I think so; I am not aware of any difference.

453. Does not the Adjutant-general interfere more in the disposal of the patronage of the regiment than he did?

Lieut.-Gen. Sir G. Pollock, G.C.B.

25th Nov. 1852.

I think it is much the same as it has always been. I can recollect, when I was a young man, I was appointed Quartermaster by the Commander-in-Chief, and I hardly knew the commander of my own battalion.

454. I speak of the appointment of Native officers?

The commander of a Native regiment has the patronage, in so far that he recommends, and the recommendation is always attended to by the Commander-in-Chief.

455. Is there not more disposition at the present time, than there formerly was, in the Adjutant-general's Office, to listen to appeals from those who think themselves unjustly passed over in the regiment?

I really cannot say; I have never experienced it myself, and I commanded a battalion of Natives for seven years, as well as Europeans.

456. How long since?

It was about 1830 that I was with my regiment there, until 1838, when I was appointed Brigadier, and left it.

457. You cannot speak to any time subsequent to 1838?

No, I cannot.

458. Earl of *Ellenborough.*] Are promotions in Native regiments made more according to seniority than they used to be?

I should say rather less; I think merit is in some way rewarded in Native regiments, and I do not think that is objectionable.

459. Lord *Elphinstone.*] The rule is to appoint by seniority?

The general rule was to appoint by seniority, whether the man was fit or unfit; but I think that has been broken through very much lately; now a man who is appointed must read and write, and generally his merits be established, before he is appointed.

460. Viscount *Gough.*] Are you aware of the system which is pursued in the recommendation of Native officers; that is, when a vacancy takes place in a Native regiment, a letter comes from the regiment, from the Commanding Officer, giving a list of the three senior officers, if any one of those three should be in his opinion fit for the position; but if the three senior officers are not fit, they are passed over, and he comes down till he goes to a non-commissioned officer, to a Jemadar if it is a Subadar vacancy, and then he recommends him?

Yes, and that leads me to say that formerly the rule of seniority used to be adhered to, but now it is not.

461. *Chairman.*] Are Native officers ever transferred from one regiment to another?

I do not think there has been a case of that kind.

462. Is a man ever promoted from one regiment to a higher position in another regiment?

I think not.

463. Lord *Stanley* of Alderley.] Has it ever occurred within your experience, that there has been a deficiency of medical officers in the Native regiments?

Sometimes, but not frequently.

464. Have you ever known an instance where there has been no European medical officer with a regiment?

I cannot recollect an instance; but I have heard of a regiment marching from one station to another which had not a medical officer, but an Apothecary was sent.

465. In those cases, in whose hands rests the medical department of the regiment?

With the Apothecary, or whatever he is who is sent.

466. Is he a Native?

I think they are half-castes generally; now they are educating Natives as medical officers, and they would send one of them.

467. Do Natives who have been educated to the medical profession, show considerable skill and aptitude for it?

I believe

Lieut.-Gen. Sir G. Pollock, G.C.

25th Nov. 1852.

I believe they do; I have not seen any myself, but from what I have heard, I believe they do, and several have been in charge of regiments marching from one place to another, but they are well educated men.

468. From what you have heard, have they shown considerable skill in the profession?
Yes.

469. Do you think it would be expedient to hold out any appointments in the regiment of a higher class than they at present hold, to Native practitioners?
I am not sufficiently acquainted with the Native practitioners to express an opinion, but from hearsay I should say that they were very skilful, and if they attained greater advancement in their profession, I do not see why they should not participate in the advantages.

470. Have you heard of Europeans who have consulted Native officers in the absence of European medical men, for their own families or for their own health?
I cannot mention an instance, but I know that they have done so.

The Witness is directed to withdraw.

LIEUTENANT-GENERAL SIR GEORGE BERKELEY, K.C.B., is called in, and examined as follows:

Lieut.-Gen. Sir G. Berkeley, K.C.B.

471. *Chairman.*] YOU have been a good deal in India?
I was three and a half years in India.

472. In what capacity?
I was Lieutenant-general in command of the Madras army.

473. Were you in the field with the Madras army?
No, never before an enemy.

474. What is the state of the Madras army with regard to efficiency?
Very good indeed; it is excellent.

475. Is there anything in the constitution of the army that you think might be amended?
There were some things when I was there which I considered might be amended; I am not at this moment prepared to enter fully into the state of them, but I think there are some things that might be amended.

476. Perhaps you will have the goodness to state, as far as you recollect, what improvements might, in your opinion, be effected?
I think there are too many officers taken away from the Native regiments, and put upon the staff and civil duties; there are only six Captains to each battalion.

477. What is the strength of a battalion?
From 600 to 700; there being only six Captains to the regiment, the general run is two on the staff; it is allowed that two Captains should be on the staff. Then, in a climate like India, the chances are, that two Captains are generally away, either on leave of absence or on sick leave, and consequently there remain only two Captains with the regiment, which, of course, makes the number of Captains actually doing duty with the regiment very uncertain, as one of those Captains, or perhaps both, may be taken ill.

478. When the army goes into the field, the officers are called in?
The officers are generally called in; I do not speak from my own knowledge of that, but it is the order.

479. You think, then, that the establishment of officers should be greater?
I think it should, if the same number are to be allowed to be taken away from each regiment for the staff; the number that is now allowed by the Court of Directors to be taken away is two Captains and three Subalterns; it is not to exceed that.

Lieut.-Gen. Sir G. Berkeley, K.C.B.

25th Nov. 1852.

480. Are you of opinion that it would be desirable not to employ officers in those appointments?

No; I do not think that, because in my own opinion there are numbers of situations that only military officers, or men having a knowledge of military matters, should be employed on.

481. Then your opinion is, that the remedy to be applied, would be, to have a larger number of officers to each regiment?

It is, if the present system is continued.

482. Lord *Elphinstone.*] Are you aware of the average number of officers detached from their regiments in the Madras army?

No.

483. We were told yesterday, that three and a half were on the average detached in the Madras army, whereas in Bengal there are six?

By referring to the Madras Army List, which I have, I could give an answer to that question, but I cannot at this moment. Some regiments have more officers withdrawn from them than others; till I looked over the list and struck the average, I could not give an opinion.

484. No regiments have above the number of officers allowed by the Court of Directors withdrawn from them?

No regiments have above the number allowed withdrawn from them, except the Governor-general absolutely required their services.

485. Viscount *Canning.*] Is it not the practice in the Madras army, to make what are called "special cases," allowing the withdrawal of more officers from their regiments than the regulations permitted?

There are cases of that sort, but they are special cases, and which I, as Commander-in-Chief, should most strongly remonstrate against; one instance of that kind I can recollect; the present Governor-general applied for an officer to be placed on the civil staff in, I believe, some revenue position, and the answer was, that he was not eligible, because, if he were withdrawn, there would be more officers withdrawn than the regulations allowed. Then there came a second letter stating, that it was necessary for certain purposes that this officer should be taken, and as it was supposed to be for political purposes, it was granted; but, of course, it was reported to the Court of Directors at home as such, and the Court of Directors disapproved of it, and desired that it should not be done in future.

486. Then, in fact, such special cases were of very rare occurrence during the time you commanded the Madras army?

They were rare; in fact, I cannot call to mind more than one or two such cases.

487. *Chairman.*] Are there any other suggestions that you could give for the improvement of the management of the army?

I was so short a time there, that I am not prepared at this moment, unless I were asked, in detail, upon particular points, to make any suggestions; what I should generally complain of is what I have stated, namely, the want of European officers. With the constitution of the army I had nothing to do; I should only say, generally, that I found the army in the most excellent order, and I only trust that I left it in as good order; I have no complaint to make of the men; I never met with a more orderly set of men in my life than the Sepoys.

488. What class of men are they, and from what country are they generally recruited?

The Madras Sepoys are, generally, of the lower castes; they are not high caste, and, perhaps, they are more obedient in consequence of that; the Cavalry are of a superior class of men; they are generally Rajpoots, or Hindoos of high caste, or Mussulmen.

489. Are the Cavalry an efficient body?

They are very effective regiments; they are not as strong as they might or, perhaps, ought to be, but they are exceedingly efficient, and do their work with the utmost good will.

490. Have you formed any judgment as to the comparative merits of regular and irregular Cavalry in India?

Lieut.-Gen. Sir G. Berkeley, K.C.B.

25th Nov. 1852.

I have had no opportunity of seeing them on service; I saw a good deal of the Nizam's Irregular Horse; there were no Irregular Horse under my own immediate command; I had an opportunity when I was at Hyderabad of seeing them there; they were a magnificent force of Cavalry; they found their own arms and their own horses, and received a certain sum to do so; I never heard any complaint of them.

491. Lord *Elphinstone.*] Are they of a superior caste, either high caste Hindoos, or Mussulmen?
Yes.

492. *Chairman.*] Can you form a judgment of the comparative expense of the regular and the irregular corps?
I should think, indeed I am pretty sure, that the Irregular Horse are much less expensive; the officers of the Irregular Horse are generally of high caste; they are men of family, and they very often have a number of horses of their own that they let out to the other men.

493. Are their appointments better suited to the service than those of the Regular Cavalry?
I should say, generally, they are more expert in the use of their arms.

494. Are their saddles better?
Their saddles are better suited for them; their saddles are not such as I should like to ride in, but they are much better suited to men who have been accustomed to that saddle all their lives, and to ride short.

495. And their swords are better suited for them?
The men employed in the irregular corps provide their own swords; when I inspected the Kurnool Horse, the officer commanding particularly requested that I would look at the men's swords; there were all sorts, and I asked the men which sword they liked best; I came at last to a man who had one of our old curved light dragoon sabres, which I was rather surprised to see, and I asked him how he came by it; he said there had been a sale of some of the old cavalry equipments, and that he had got this, which was the best sword he ever had, and he would not exchange it for any other; that was because it was a good blade with a good deal of curve in it; they almost always cut; straight swords are meant for the thrust as well as the cut.

496. Lord *Elphinstone*] Were the irregular corps a more popular service generally than the regular?
I think they were; I had no command over the irregular corps in Madras, but I always heard that that was so.

497. You may have heard that many of the men about Arcot who used to enlist in the Madras Cavalry, now prefer to take service in the Mysore Irregular Horse?
That I believe to be the case.

498. *Chairman.*] Have you formed any judgment of the Artillery in Madras?
I have seen a good deal of the Artillery.

499. What is your opinion of their efficiency?
I should say that they were very efficient; the Horse Artillery there is as good as any I ever saw.

500. Does the same complaint exist in the Artillery as in the other services, namely, a want of European officers?
I do not think there is quite so much ground for complaint there, because the Artillery officers are put, if I may so call it, on their own staff. At each place there is a Commissary of Ordnance in charge of Artillery stores, who is always taken from the Artillery; there are, besides, a great number taken from them; but I should not complain so much of the removal of officers from the Artillery, as of their removal from the other corps, because they are more easy to be got at in case of need.

501. You have spoken of the Commissary of the Artillery; have you formed any judgment of the management of the Commissariat of Madras?

Lieut. Gen. Sir G. Berkeley, K.C.B.

25th Nov. 1852.

The commissariat are totally distinct from the Commander-in-Chief; he has no control whatever over them.

502. In your opinion, is the commissariat well managed?

I have never had an opportunity of seeing them in the field. The commissariat is easily enough managed as far as provisioning the men, who live generally upon rice, but whether the commissariat arrangements are sufficient in the field to bring provisions up in proper time, and in sufficient quantity, I have no means of judging.

503. Is it managed with due regard to economy?

I suppose it is; but not having any authority in the matter, I can hardly say. The Commissary-general would, of course, oppose any interference if the Commander-in-Chief attempted to ask questions upon the subject; very likely the Commissary-general would not answer them.

504. Lord *Elphinstone*.] As a Member of Council, all the commissariat accounts were seen by you, as well as by the Governor?

Yes, they were; they were looked over, but not having been in the field with them, I had no means of judging of the efficiency of the commissariat.

505. *Chairman*.] Do you know anything about the system of furnishing the troops with spirits?

Yes, they are furnished by the commissariat; they purchase large quantities, and they have different shops in all the cantonments where they are sold.

506. Has not some attempt been made at Madras to substitute the drinking of beer for spirits?

Yes; that is with the European troops principally.

507. The Native troops do not drink anything?

The Native troops do not drink beer, but I have known some of them drink as much arrack as you choose to give them.

508. Lord *Elphinstone*.] Those are persons of low caste?

Yes; the upper caste will not do so.

509. *Chairman*.] Have you formed any opinion as to the medical staff?

I have always found the medical staff very efficient, and exceedingly attentive.

510. Are they sufficient in number for due attention to the health of the troops?

I have found, once or twice during my command, from sickness of medical officers and other causes, that the regiments have been deficient of medical officers, and in that case I have immediately ordered all the officers who were on the staff to join their regiments; but that has happened only once or twice.

511. Did they readily join their regiments, or was it difficult to get them back?

There was an order given which they could not disobey.

512. But were they not often at such a distance that you could not get them?

We then took the nearest; if we wanted medical officers at Bangalore, I should immediately send from Madras the medical officers who were on the staff; in short, I should take them from the nearest station that could afford them.

513. Lord *Elphinstone*.] What is your opinion of the Native medical subordinates?

They are very willing and very attentive, and I think they are very much liked by the Native men; in fact, I have heard that many of them would rather go and consult one of the subordinates than the European medical officer of the regiment.

514. Has the effect of the Medical School at Madras been good?

Very good indeed; I used frequently to attend the examinations at the Medical School, and they were as good as I ever saw.

515. The subordinates turned out from the Medical School will be very superior to those formerly attached to the regiments?

Decidedly.

Lieut.-Gen. Sir G. Berkeley, K.C.B.

25th Nov. 1852.

516. In fact, they are taught everything which they could learn at a medical college in Europe?

Yes, and I have heard examinations of them; they seemed to answer the questions very readily; they have been asked how they would treat particular diseases, and the medical examiner told me they answered with perfect correctness; and there is no doubt that if you had not them, you would not have medical officers enough to send with small detachments; for example, if you send a company or two of Sepoys, you cannot spare the European medical man of the regiment to go with them, but you send one of these subordinates.

517. In short the result has been very satisfactory?

Yes.

518. Have you ever known a regiment march from Madras without a European medical man?

No.

519. We have been told that in Bengal a regiment was sometimes allowed to march without a European medical officer; was that the case at Madras?

Never that I know of, for this reason, we always make it a rule that there should be one European medical officer with each regiment, and if we had not the means of sending one, there was one taken from the staff, so that I venture to say that I never knew a regiment at any time without a European medical officer, and I am perfectly certain they never marched without one.

520. *Chairman.*] Is there any other subject that you wish to mention?

There is nothing that I remember at this moment. It escaped my memory to state, that I consider the system in the Madras army of removing Lieutenant-colonels to give the senior Majors the command of regiments, is highly objectionable, and detrimental to the service.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned till Tuesday next,
One o'clock.

Die Martis, 30° *Novembris* 1852.

LORDS PRESENT:

The Lord PRIVY SEAL.
The LORD STEWARD.
Earl of ALBEMARLE.
Earl POWIS.
Earl GRANVILLE.
Earl of ELLENBOROUGH.
Viscount CANNING.
Viscount GOUGH.
Lord Bishop of OXFORD.
Lord ELPHINSTONE.
Lord WODEHOUSE.
Lord COLCHESTER.
Lord WHARNCLIFFE.
Lord ASHBURTON.

THE LORD PRIVY SEAL in the Chair.

Evidence on the Government of Indian Territories.

LIEUTENANT-COLONEL WILLIAM BURLTON, C.B., is called in, and examined as follows:

Lieut.-Colonel W. Burlton, C.B.

30th Nov. 1852.

521. *Chairman.*] YOU are on the Retired List of the Bengal Army?
I am.

522. You have been resident a good many years in India?
About 39 years.

523. During a considerable part of that time you have been employed in the commissariat?
About 27 years.

524. And latterly you were Commissary-general?
I was, for about 11 years.

525. Will you have the goodness to state the manner in which the commissariat is formed?
The commissariat officers consist of European commissioned officers of the army. There is one Commissary-general, one Deputy Commissary-general, one Joint Deputy Commissary-general, three First Class Assistants, three Second Class Assistants, four First Class Deputy Assistants, four Second Class Deputy Assistants, and twelve Sub-Assistants, or sometimes more, all officers of the army.

526. At what rank are they taken from the army?
There is no particular rank requisite at entering the department; but they are not allowed to remain in it after attaining a certain rank, unless they obtain the situation of Commissary-general, or Deputy Commissary-general, or First Assistant; otherwise Field officers are obliged to vacate.

527. Do they come in as cadets?
No; no officer can hold a staff appointment till he has been a certain period in India.

528. What is that period?
Five years; and they are also obliged to pass an examination in the Native languages, the Persian and Hinduee.

529. Do the commissariat officers make contracts themselves, or do they employ Natives for that duty?
The contracts are entered into by the commissariat officers: they advertise openly, tenders are sent in, and they are then submitted to the Military Board.

Lieut.-Colonel W. Burlton, C. B.

30th Nov. 1852.

530. Is not the Military Board a new introduction as applied to the commissariat?

No; the Military Board first obtained a control over the commissariat about the time I entered the department, which was about 1820 or 1821.

531. Have the commissariat department any power of action without the consent of the Military Board?

All important matters must be referred to that Board for sanction; they cannot conclude a contract, for instance, without getting the previous authority of the Board; in fact they can do little or nothing without the previous sanction of the Board.

532. Is that the case when the army is in the field?

It is the rule; but there must of necessity be exceptions in a case of that kind. The Deputy Commissary-general, or the Commissary-general himself, whichever is with the army, will then assume the responsibility of giving orders; but even those orders he must send to Calcutta, to be approved of by the Military Board; and they must be reported also to the Government for their sanction.

533. To what department of the Government are they referred?

To the Military Secretary of the Government.

534. Is that more than a mere matter of form; does the Military Secretary enter into the details of the contract?

I imagine not: but as I never was admitted into the Council chamber, of course I cannot say. I believe, however, it is the duty of the Military Secretary to submit the returns which come from the Military Board in the Council chamber, and that then, of course, such orders are passed as are thought proper.

535. Where do the accounts of the commissariat undergo examination?

In the office of the Military Board; they are audited there, and examined.

536. Do they undergo any previous audit on the part of the Commissary-general?

None whatever; he has no establishment of clerks for the purpose. He does not even see the accounts or disbursements; but he receives a copy of each officer's account current, which is a different affair, every month.

537. How is the accuracy of the accounts ascertained?

They are examined in the office of the Military Board; it is called the Commissariat branch of the Military Board. They are examined by clerks employed expressly for the purpose; they are then submitted to the members of the Board, sent round in circulation, and they pass their remarks upon them.

538. What species of vouchers are sent in to the Military Board?

Every voucher whatever goes to the Military Board; the bills are sent to the Board, and they are supported by vouchers. For example, when the Commissary sends in a bill for any disbursement which he has made, that is supported by sending the authority under which he has acted, an indent for the articles supplied, a certificate of its having been furnished, and so on. These come to the Board, and there the calculations are examined, and the accuracy and sufficiency of the vouchers are inquired into; the clerks then make their remarks on and send them round in circulation to the members of the Board.

539. What are the exact duties of the Commissary-general?

The Commissary-general receives reports and references from his officers, and sends them on to the Board, with his opinion upon them. He has the control of all the working or executive details of the department; all the minor matters not involving expense, and the nomination of the numerous agents and other *employés* of the department.

540 When he examines those reports, does he examine the details of the account and the vouchers?

No; the actual accounts are not sent to the Commissary-general; they go direct to the Board; but of late years the Commissary-general has been a member of the Board.

541. Lord *Wharncliffe*.] Then, according to your account, the only examination which the commissariat accounts undergo, is the audit in the Military Board?

Yes.

542. *Chairman.*] What species of vouchers are sent from the commissariat officer in the field?

They are almost innumerable. The vouchers sent in in support of their bills by the commissariat officers in the field amount to several thousands monthly, and they are many of them unnecessary and useless documents; of course I am speaking with reference to the vast numbers required from the officers.

543. Will you state the course of proceeding by which, in the first instance, a requisition is made for provisions and for carriage for an army going into the field?

In the case of an army going into the field, there are public cattle belonging to the Government which are employed for all public purposes. There are no particular requisitions required for these, merely the indents from regiments for the required number, which is defined by the Regulations. In regard to provisions for an army taking the field, the commissariat officer makes the necessary arrangements, by giving notice to his contractors, or employing others, or sending out agents to purchase, as may seem most advisable.

544. Will you state the different steps which are taken to supply an army going into the field?

In the first instance, the Commissary receives indents from every regiment for whatever they require; it may be for cattle (camels or elephants) or carts; whatever it may be, he receives indents from the officer commanding the regiment, and then has to supply what is wanted. The cattle are made over to the different regiments or brigades; and those which are public ones (the property, that is, of Government), are still fed and provided for in all ways by the commissariat.

545. How do you supply them?

They are mostly public cattle, the property of the Government, which are supplied for public purposes; but there are also indents for the private carriage of the officers and men. To meet these requisitions, the commissariat officer employs men called chowdries and thokedars, whom he sends out to hire and bring in as many camels, bullocks, or carts, &c. for each regiment as are wanted; and after that, the commissariat officer has nothing further to do with them; he makes them over to the Commanding Officer, and tells him what the hire is to be; but the public cattle he is obliged to feed, pay their attendants, &c.

546. Earl of *Ellenborough.*] How do you purchase the public cattle?

A great many of them are supplied from the cattle stud at Hissar; there have not been very many purchased of late in times of peace.

547. When camels, or other animals, are purchased, how do you purchase them?

They are always presented to a committee of officers, who pass them into the service. They must certify that they are of proper age and height, and capable of carrying the prescribed regulation loads; these are, for elephants 20, and for camels 5 maunds; a maund is about 80 lbs.

548. *Chairman.*] Of whom is that committee composed?

Commissioned officers, appointed by the officer commanding; wherever the purchase is required, it may be at a cantonment, or it may be in camp. The commissariat officer settles with the owners for the price of the animals, and then applies to the Commanding Officer to order a committee to assemble to admit them into the service. They are then produced before this committee of officers, and on being approved of by them as fit for the service, they are branded in the presence of the committee; the commissariat officer pays for them: they are entered in the books, and become public cattle.

549. They then come under the charge of the commissariat officer?

Yes. Then the commissariat officer is responsible for their care and their feeding, and he sees that they are properly looked after, and not over-loaded or ill-treated.

550. Viscount *Gough.*] Do not the public establishments supply a sufficient number of animals, except in time of emergency and in the time of war?

Enough for all public purposes in general.

551. Lord *Elphinstone.*] For carrying grain, as well as other purposes?

Lieut.-Colonel W. Burlton, C.B.

30th Nov. 1852.

Except in time of war, they never carry grain, and then very rarely; they are kept up for the conveyance of tents, ammunition and public stores.

552. *Chairman.*] Will you go through the whole proceeding of supplying the army in the field?

I have stated the course as to the cattle; the next consideration is the provisions.

553. Earl of *Ellenborough.*] Would not a commissariat officer ordered into the field to assist in provisioning a corps, first of all apply to the Commanding Officer, and ascertain from him what number of cattle and what amount of provisions was required?

No; the Commissary-general would be referred to, and he would obtain the orders of the Government as to the amount of supplies that would be required to accompany the force; that is, the period for which the provision of supplies should be made.

554. How would he obtain that supply, by advertisement, or by employing his own officers?

Chiefly by employing his own Native agents; he would often have to send them a considerable distance for grain, &c.

555. How are those agents remunerated?

They receive monthly pay for their services.

556. *Chairman.*] Those are all Native agents?

Yes.

557. Earl of *Ellenborough.*] How do you proceed to form contracts in the field?

They are advertised for, both in English and Persian, and Hindooee, in all the newspapers.

558. Lord *Wharncliffe.*] Supposing you had an army engaged in a campaign in the Punjaub, or in any territory upon the extremities of the British dominions, how would you proceed there to obtain tenders for contracts?

In the same way, by advertising in all the papers, and also by issuing what are called ishtahars, or notices, which are posted up at the tannahs, or police-stations, of every town or village, for the public to see.

559. Earl of *Ellenborough.*] As soon as a force is collected, does not the fact become perfectly well known to the persons who supply the provisions?

Yes; it requires very little proclamation.

560. Lord *Wharncliffe.*] Is there any competition among the contractors?

Very great at times.

561. *Chairman.*] How are the tenders given in?

They are given in to the commissariat officer.

562. Lord *Wharncliffe.*] In the ordinary way, by sealed tenders?

Yes; the commissariat officer then forwards them for the sanction of the head of the department. They would be sent, in general, to the Commissary-general, who would at once submit them to the Military Board for approval. In the field, or in emergent cases, he would sanction them himself, and report having done so to the Board afterwards.

563. *Chairman.*] Do they always take the lowest tender?

That is the general rule, and it is generally acted on, unless there is any strong objection to the tenderer. If anything can be brought against the man's character, or he is supposed to be a man of no substance or capital, it is a matter of discretion. The commissariat officers recommend, the Board decides, and very frequently in opposition, unfortunately, to the commissariat officer.

564. Earl of *Ellenborough.*] Are the contracts generally well performed?

I think, upon the whole, they are.

565. Lord *Wharncliffe.*] In spite of the competition which exists, are not the profits of those parties supposed to be very large?

I do not think they are so now; and I believe many have been great losers by their contracts; but it is impossible to speak with any certainty; the natives

are

Lieut.-Colonel W. Burlton, C.B.

30th Nov. 1852.

are exceedingly cautious in speaking of such transactions, or their pecuniary affairs in general.

566. Earl of *Ellenborough.*] Are not your contracts sometimes to a very great extent: for instance, when the army was coming back from Affghanistan, how many camels did you hire in the course of a few months?

I can hardly answer that without book; it was a very large number certainly; about 20,000, I think, in the course of two or three months.

567. Earl *Granville.*] Are the supplies generally made by a few great contracts, or by a number of smaller contracts?

There are a great many contracts. At every large military station there are a great variety of articles wanted: I think, generally speaking, there is competition; I should say, on an average, there are eight or ten tenders for every contract that is put up.

568. *Chairman.*] Do the parties give security for the performance of those contracts?

Always: they are obliged to lodge cash, or what is called Company's paper, promissory notes of the Government. Formerly they used to lodge the security of bonds given by native bankers; but we found so much difficulty in realizing those when it became necessary to do so, that we came to the determination of requiring deposits to be made either in hard cash, or in promissory notes of the Government.

569. You have stated that, in general, the contracts are well performed?

Upon the whole, very fairly.

570. Have not great complaints been made in some of the campaigns of the animals not being sufficiently fed?

I do not recollect any but very exceptional cases of that kind: during the Affghanistan war, for instance, in some of the passes, there was not a blade of verdure or fodder, and of course the cattle suffered greatly.

571. Are there contracts for feeding them?

Not the hired camels; only the public camels, bullocks and elephants.

572. Were the contracts for feeding the public camels and bullocks well performed in that instance?

I am not sure that there was any contract for feeding the cattle with that army; I certainly have no recollection of any complaint against any contractors on that score.

573. There was no complaint of the loss of Government cattle in consequence of the contracts not being properly performed?

Not as a consequence of any failure in a contract, certainly; in the Affghanistan war the army had to pass through the Khyber, the Bolan, and other passes, where there was no pasturage. Of course at those times our cattle must have suffered very much from want of green fodder; but this is not an article provided by contract, and I do not recollect any complaint of their not getting their grain, which is so; they are allowed a certain quantity of grain (gram) every day.

574. Can you suggest any method of improving the commissariat service?

I think, perhaps, I could, but not to any very great extent. I think, if they had a head of the department who was responsible only to the Government, free from any other control, and in whom there was placed a greater degree of trust and confidence than there is at present, and if European officers were likewise treated with more confidence, there would be a great deal more *esprit de corps* and zeal in the performance of their duty. My present impression is, that the officers of the department generally feel that they are treated with suspicion, as if they were dishonest. I think that a feeling of that kind has a most deadening effect upon their zeal. I think the heaps of petty vouchers that are required from them in support of even the most paltry payments, are quite enough to disgust and annoy them: some of the vouchers which the officers are required to produce are, indeed, almost an indignity to them: I think if that were done away, there would be a much better feeling, and they would be more zealous.

575. Lord *Elphinstone.*] Are you aware that in Madras the system is so far different

Lieut.-Colonel W. Burlton, C. B.

30th Nov. 1852.

different that the Commissary-general is responsible to the Government only, and is not under the orders of the Military Board?

I am not aware whether that is the case now; it used to be so, and it used to be so in Bengal also; for instance, when the commissariat was first established in 1810, the Commissary-general corresponded directly with the Government through the Military Secretary, and it was whilst that system was in force that the commissariat was most flourishing and most successful.

576. Lord *Steward.*] What is the nature of the vouchers which the commissariat officer is required to produce?

They are so very numerous, that it is difficult to describe them; but I remember an instance which will serve to illustrate the system; it was a case where one or two doolies required a little repair; this was in camp; the bottom part of the doolies, I think, was a little torn; the commissariat officer was desired to repair it; but before he could do so, he was obliged to have a committee of officers to assemble upon the dooly to say that it required repair, and to state the nature of the repairs. When that was done, he ordered his Native agent, who was attached to the regiment, to do it; and then, when it was done, he was obliged to have another committee of officers to report that it was done, and to certify that they had examined the charge for doing it (which might have been 6*d.* or 1*s.*), and in their opinion found it reasonable: now that is one instance. I think that is not the kind of test to which an officer's charges should be subjected. In the particular case to which I refer, the charge was actually retrenched by the Military Board for want of some of the vouchers above stated.

577. Viscount *Canning.*] Is that recorded in writing, and sent as a voucher?

Yes; a military committee is called, and for their report (required in triplicate) three half-sheets of foolscap are required; then, when the second committee, after their inspection, make their report, certifying that the charge is reasonable, that also has to be written in triplicate; here at once are six half-sheets of foolscap for that matter alone.

578. Earl of *Ellenborough.*] Does not that system tend to occupy the Commissary-general's mind with trifles, when it ought to be left entirely at liberty for matters of importance?

Most assuredly.

579. Is not one consequence of this system, that there must be great delay in bringing those accounts for settlement before the Military Board?

No question of it.

580. Can you state at what period after the return of the troops from Affghanistan the accounts were finally settled?

I believe they are not all settled yet; at least they were not settled when I left India, in 1848, and I have been informed that they are not much further advanced now.

581. During the whole of that period, the deposit of Company's paper on the part of the contractor remains in the hands of the Government?

Yes.

582. Has it ever occurred to you that it would be possible to find any other body of men to whom the duties of the commissariat department could be entrusted with greater security than to the military officers who now perform them?

Certainly not.

583. Have not the commissariat officers more authority with the natives than civilians would be likely to have, and are they not treated with more respect by the officers of the regiments with whom they communicate than civilians would be?

Certainly; not a doubt of it, assuming that by the word "civilians," uncovenanted servants are meant.

584. *Chairman.*] Have any instances come to your knowledge of large bribes being offered by natives to officers of the commissariat?

Not to my positive or official knowledge. I remember hearing of one instance, in which a Native contractor (or the brother of a contractor) offered to to the wife of an officer employed in Affghanistan 20,000 or 30,000 rupees, merely, as he said, to get "master's favour." The lady very angrily turned the man out of the house, and sent her husband information of the fact. Some time afterwards it casually, as I think, came to my knowledge, but it was not officially reported. I do not recollect any other case of the kind. I believe the fact is, that the natives are perfectly aware that it is useless to offer a bribe to any commissioned officer, and I do not think they have attempted it for years past; they are, however, suspected of not infrequently bribing, or attempting to bribe, the office clerks, with the view of getting their accounts leniently scrutinized.

585. Earl of *Ellenborough.*] Do you recollect any instance of an officer of the commissariat having had his conduct submitted to a court of inquiry, in consequence of its being imputed to him that he had acted dishonestly in the execution of his duty?

No, I do not recollect any instance of the kind exactly; I remember something of an inquiry being held on an officer, but that was on some complaint made by a native servant, whom he had discharged, of the officer having favoured some persons by giving or recommending them for a contract unjustly. I do not think anything else was charged, and that ended in the complainant being sentenced to imprisonment for a term, for making false accusations. It was not brought before a court of military inquiry, but before the judge or magistrate of the place.

586. *Chairman.*] You think that more discretion should be left in the hands of the Commissary-general, or the chief officer of the department?

Certainly.

587. Is there any other amendment that you would suggest for improving the department?

That is rather too comprehensive a question to answer without previous consideration; I have not thought much on the subject since I returned to England, nearly five years since, and I believe several changes have been made in the department during that interval.

588. Earl of *Ellenborough.*] Is not one great difficulty which is thrown upon the department this, that it is very suddenly called upon to furnish supplies for very large armies in the field without previous notice?

Yes.

589. *Chairman.*] You have stated that the beasts of burden are principally the property of the Government; how are they supported in common times, and how are they obtained; are they bred, or are they bought?

The camels and bullocks are bred at Hassar, where there is a large breeding farm kept up by Government.

590. In each Presidency?

In Madras there is also a similar establishment; I do not know whether they have at Bombay or not.

591. Is that establishment found sufficient to meet the ordinary exigencies of the service?

I think there have been comparatively few cattle purchased of late years, except on occasions of war breaking out, when very large numbers have been required.

592. Was that establishment in Bengal a very expensive one?

The cattle cost, I think, fully as much as they can be bought for, perhaps more; but they are generally very superior to what can be bought.

593. Earl of *Ellenborough.*] Was there not very great mortality, amongst the camels especially, in the Affghanistan war, and also subsequently?

Yes, very great.

594. Lord *Elphinstone.*] Are all the studs in Bengal under the commissariat officers?

The cattle studs are, not the horse studs; the commissariat has nothing to do with the latter.

Lieut.-Colonel W. Burlton, C.B.

30th Nov. 1852.

595. Earl of *Ellenborough.*] What number of public cattle do you recollect being in our possession at any time in Bengal, of camels, for instance?

I think the establishment was between 5,000 and 6,000.

596. How many bullocks?

Almost as many, I think, of transport train bullocks; the Ordnance bullocks are attached to the regiments of artillery.

597. What number of elephants?

I think about 500 or 600; but the establishment was often exceeded when an occasion of that kind arose, and at other times it was perhaps deficient.

598. *Chairman.*] That department is entirely under the commissariat?

Yes; both the elephants, camels and bullocks, except those attached to the artillery, which are borne on the regimental returns.

599. Is the stud you have mentioned only for bullocks and camels?

Only for camels and bullocks; it used to be for horses; but that was broken up a few years since.

600. Have you any means of arriving at the general annual expense of those establishments?

No; I suppose they could give the information at the India House.

601. Earl of *Ellenborough.*] What are the allowances, in addition to the regimental allowances, of the several officers of different grades in the commissariat?

The Commissary-general gets 2,250 rupees a month, consolidated; that is, with his regimental pay, but no other regimental allowances, batta, tentage, &c. The Deputy gets 1,200, with his pay and regimental allowances; the next Class, the First Assistants, get 1,000; the Second Class Assistants 700; the First Class of Deputy Assistants get 500; the next Class 400, and the Sub-assistants get 300 a month.

602. Have all those officers in the inferior grades their regimental allowances also?

All, except the Commissary-general; he had also till he was put into the Board; when he became a member of the Board, his salary was placed upon the same footing as the other members of the Board; there was no difference in the actual amount he received; it was merely drawn in a different form.

603. Usually, excepting there is a demand for his presence in the field, in consequence of the greatness of the operations going on, does not the Commissary-general reside in Calcutta, as a member of the Military Board?

Yes; I think it would be a great improvement if he were not tied down to Calcutta with the Board; it would be much better that the Commissary-general should have a roving commission, and be able to move about the Presidency, from one end to the other.

604. *Chairman.*] Would not that require considerably greater expense?

It would be a very trifling expense.

605. Is the commissariat of Bombay and Madras under the commissariat of Bengal?

No; they are quite distinct.

606. Earl of *Ellenborough.*] What arrangements do they come to as regards the commissariat, when the forces of two or more of the Presidencies act together in the field?

Each has its own commissariat, quite independent; the case happened to me in the Burmese war. I was there as an Assistant Commissary-general in charge of the Bengal division, and the present Commissary-general of Madras was there with the Madras division; and there was one Deputy Commissary-general who had a general control over both; but he did not interfere in any way with the pecuniary arrangements or accounts of the Madras commissariat.

607. Then the commissariats of two different Presidencies may be bidding against each other in the market?

They might if it were in India; but there was scarcely any market in Birmah at all; almost all our supplies came from the Presidencies.

608. But

608. But wherever they did go to make their purchases, they might go into the market bidding against each other?
Certainly.

609. *Chairman.*] And they do so sometimes?
They must do so if they happen to be together; the only competition we had upon that occasion was for buffaloes and rice; there used to be a little competition as to who could secure the most buffaloes, when we had no other fresh meat, and but little of that.

610. Are the Queen's troops furnished by the commissariat in the same way?
Yes; in fact the supply of the Queen's and other European troops is the most difficult part of the commissariat officer's duty; it is very difficult to give satisfaction in supplying meat and bread, and tea and sugar, and all such things as compose a soldier's ration.

611. Earl of *Ellenborough.*] How are supplies obtained for the troops when they are moving from station to station in time of peace?
The contractor sends his men with them, partly to supply them on the route; every regiment has a Gomastah, or agent, attached to it.

612. How is the carriage provided for?
The contractors furnish their own generally.

613. Do not they make requisitions upon the magistrates?
No; and I do not think they would be attended to if they did; they might possibly get the commissariat officer to make a requisition for them; but that is done very seldom, if at all. The fact is, they get cattle and carts cheaper by their own exertions than they would if they resorted to the civil power to press them.

614. But in fact are not carriages frequently pressed and carried on for a considerable distance?
I think not for any considerable distance; when a corps moves, they apply to the civil power for assistance. If cattle and carts are pressed for the purpose, the owners are well paid for it; but there is no payment that can compensate them when they are taken away in time of harvest, or ploughing.

615. *Chairman.*] How are the payments made to the contractors?
By the executive commissariat officer; the contractor brings his bill for what he has supplied, and he brings his voucher from the officer commanding the regiments.

616. When is the payment made?
It ought to be made every month, directly he brings the bill and voucher.

617. How is the money provided to the Commissary?
The Commissary-general used to give drafts on the collectors of the revenue throughout the country; every commissariat officer sends to the Commissary-general an estimate at the end of every month of his probable expenses or requirements for the ensuing month; the Commissary-general checked it if necessary, and gave him a draft on the nearest collector on account; then the commissariat officer sends to the treasury, and gets the money. I think, since the Commissary-general has had a seat at the Military Board, the latter body has taken this duty on itself.

618. The collector is an European officer?
Yes.

619. You have stated, that a long time elapses before the accounts are settled: if it is a ready-money payment, in case there is any defalcation, or any error in the account, how is that remedied?
The amount is recovered from the security of the contractor; he has lodged a deposit as security for the performance of his contract, either hard cash in the treasury, or Company's paper; and if he is a defaulter, you deduct the amount from his deposit.

620. But if it is a ready-money payment, how can you revert to a transaction four years previously?
That is done constantly; the commissariat officer pays the money; the

Lieut.-Colonel W. Burlton, C. B.

30th Nov. 1852.

Military Board then audits the accounts, and makes a disallowance or retrenchment of what they please, and orders the amount to be recovered; they recover it in the first instance by placing it to the personal debit of the commissariat officer himself.

621. Then the commissariat officer becomes a Government accountant?
Yes; he is so always, under any circumstances; and renders a monthly debit and credit account current, comprising in abstract all his payments and receipts.

622. And it remains with him to recover it from the contractor?
Yes.

623. Is the cash, or the Government paper, which he has lodged as security, kept till the accounts are settled?
It is, unless the Government choose to give it up; but I do not recollect any instance in which they have done so.

624. Is not that a great hardship upon the contractor?
They know the hardship before they make the tender, and I suppose they tender accordingly; they do not lose the interest of the money; they get the interest regularly paid to them from the Government treasury.

625. Earl of *Ellenborough.*] If the force in the field consists of 5,000 fighting men, for how many does the commissariat provide supplies?
For all of them.

626. For how many more?
For the camp followers: he only provides for the registered camp followers, properly speaking.

627. What proportion do the registered camp followers bear to the fighting men?
I suppose not much short of four to one.

628. What is the distinction between the registered and unregistered camp followers?
The registered camp followers are those who receive Government pay; the unregistered are the officers' servants, or bazaar followers; all those who receive no pay as public servants.

629. In what proportion do they exist with an army?
I suppose they are nearly as many as the others; but it is very difficult to say exactly, as there is always a mass of men, women and children crowding into the camp of whom you know nothing; of whom no returns are made.

630. How are they provided for?
The unregistered followers do the best they can for themselves.

631. Can you state what happened to them in the Bolam Pass?
I was not there; but they do contrive to live in a most extraordinary way: it is indeed a great marvel how those crowds of people contrive to feed themselves; sometimes they obtain a little from the troops in this way: every Sepoy has a certain allowance; he is allowed 2 lbs. of flour daily; he eats half of it, perhaps, and sells the other half to the unregistered camp followers, taking the money in preference.

632. When it is known that an army is in the field, that being a great centre of demand, does not the interest of all persons who are able to send supplies to the army, induce them to do so independently of the commissariat?
No, I think not; I do not believe any one sends supplies after the army; but the persons who supply the different regimental bazaars go out as far as they can with safety from the precincts of the camp, and buy grain and supplies in the villages round, and bring them into the bazaars; there is a bazaar attached to every regiment, besides the sudder or principal bazaar attached to the army.

633 *Chairman.*] Do not the camel-drivers sometimes sell some of the grain of their camels?
The grain that the camels and other cattle get is not the same that men generally eat, though they do eat it too when they are pushed; and I think it not improbable that the camel-drivers do sell and eat, themselves, a part of the animal's allowance, if they are not closely watched.

634. Lord

634. Lord *Elphinstone.*] But the Punjaubees, and people of that description, follow the camp, and supply it with grain?

Not with their own grain; they are only carriers, not merchants.

635. Do not the grain merchants send those people after the camp?

No, I think very rarely indeed, on their own account; the commissariat employ a great number of those people, and they go out accompanied by the commissariat purchasing agent to the different villages, and collect grain, and bring it after the army.

636. *Chairman.*] With respect to the registered followers, how are they paid by the Government?

They are paid by the regimental paymasters, or officers of the departments to which they belong; for instance, a cavalry troop officer draws for his men from his paymaster, and, in the same pay abstract, he draws for his grooms and for the grass-cutters of his troop; every horse has a grass-cutter, and a groom is allowed to every two: the officer commanding the troop draws for their pay.

637. And a contract is made to supply all those men with food?

Yes, generally; but it is not always that contracts are resorted to for troops in the field; sometimes it is found difficult to obtain a favourable contract, and the commissariat officer then provides his supplies by Koosh Khareed; that is, he sends out agents, and purchases on the best terms procurable.

638. What class of men are they; are they men that become fighting men as soon as there is a vacancy for them in the army?

No, I do not think any of them are fighting men; the grooms and elephant and camel-drivers, &c., are mostly Mahomedans; they are the same class or creed as the majority of the men that we have in the Native Cavalry.

639. Do they become soldiers when there is a vacancy?

No, they are not taken; officers are particular in recruiting, and prefer men of better families and more respectability.

640. Earl *Granville.*] Were you rightly understood to say that there are four registered camp followers to every fighting man; and as many unregistered?

Yes; but, perhaps, in saying "four," I went beyond the mark; I think if I said "two or three," it would come nearer the truth; but I have no data to go upon here.

641. *Chairman.*] What becomes of the camp followers in case of an action?

They take care of themselves in the best way they can, generally by getting out of reach of danger as fast as possible.

642. Will you go through the details of any improvements that occur to you as desirable in the commissariat system?

I am not aware of any others that I think of at present.

643. Can you suggest any improvement in the financial detail?

No; I am not aware of any; the whole is now done upon as good a system as it can be, namely, by open contract and open competition.

644. What alteration would you suggest as to furnishing the vouchers of expenditure?

I would merely dispense with many of them. I would trust more to the officers' honour and principle.

645. Without any account?

Not without account, surely; but now, for the smallest expenditure, they are called upon to produce half a dozen vouchers, or more, and to have committees of survey, which, after all, are generally mere matters of form, though giving much trouble, and evincing an uncalled-for distrust.

646. How would you limit it, so as to simplify it?

By simply trusting to the declaration upon honour which every officer attaches to the foot of his bill, where he declares, upon his honour, that the money has been expended rightly according to his bill, and that he has carefully examined the accounts of his Gomashta.

647. Viscount *Gough.*] Would you limit that to a certain amount?

Yes, to small items of charge.

Lieut.-Colonel *W. Burlton*, C.B.

30th Nov. 1852.

648. Earl of *Ellenborough.*] Can you suggest any improvement in the proceedings of the Military Board in the investigation of those accounts?

I think they take a great deal of unnecessary trouble, and that they cause a most useless waste of time and stationery: in a case where it is only a question about 6*d.*, it may require 10 sheets of paper before it comes through the Military Board.

649. Lord *Elphinstone.*] If the examination were made by the Commissary-general, instead of by the Military Board, would not that save a great deal of trouble?

Yes, I think it would: knowing his officers well, and with a better understanding of their duties and feelings, he would be more considerate.

650. Earl of *Ellenborough.*] Would not the matter be simplified very much, if in the rear of every force in the field there was a committee of officers, a deputation from the Military Board, to whom these accounts might be submitted, so as to settle them when they had the means of inquiry at hand?

I do not know that it would, because they would have to carry a large office establishment with them: military men seldom or never attempt to go into the mere arithmetical or fractional calculations of account; they must trust that almost entirely to the professed accountants whom they have in the office. The members of the Military Board even seldom think of examining the actual calculations of a long and intricate account; it would be impossible to find time to do so.

651. Upon whose credit does he take the account?

The professed accountants.

652. Are those Natives or Europeans?

Europeans. There are some Natives, too, who are very clever accountants.

653. Those Europeans are uncovenanted servants?

Yes; they are Europeans, and descendants of Europeans; many of Portuguese descent. Natives, also, are so employed.

654. Must not there arise, of necessity, great delay in consequence of the distance of the Board of Audit from the point at which the expenditure is incurred, a distance sometimes of 1,200 or 1,400 miles?

Yes; but there was, I think, during some part of the campaigns in the Punjaub, an office of that sort, called the Field Office of Accounts. This was after I left India, and I am not aware what benefit accrued from the measure.

655. *Chairman.*] Those accounts are sent home, are not they?

I fancy every account is sent home in abstract, but I am not aware that they are rendered in detail. Perhaps it is merely the Minutes of the Board on those accounts that are forwarded. There are regular reports, detailed statements, of the Board's proceedings sent home every month.

656. In the financial statements are accounts given of the expense of the commissariat as compared with the other military expenses?

Yes; full statements are sent in every month.

657. Are they sent home to the India House?

They must come home, I imagine. There is an average struck every month by every Commissariat officer when he closes his accounts, showing the expense of feeding every individual man or beast.

658. Do the natives generally make large fortunes out of the commissariat?

I will not say large fortunes, but certainly they most of them make money; they have nothing to check them; they have no sort of principle. The men employed by us, I think, are honest from policy more than from principle; of course I speak generally.

659. Is there not a sort of contract, called abkarry, for furnishing spirits to the troops?

No; the troops are not supplied by any abkarry; the army is supplied entirely by the commissariat. The abkarry is a license to sell spirits, granted to any native who bids highest for the privilege; he gives the Government so much a month for it, and they allow him to sell spirits in the camp, or in a town. Every

Lieut.-Colonel W. Burlton, C. B.

30th Nov. 1852.

large town, and most sudder bazaars, even in camps, have an abkarry establishment. I believe it is rather a profitable source of revenue. I will not say anything as to the propriety of it. In a camp it is the most mischievous thing in the world. The canteens of the troops are supplied with rum by the commissariat; that is furnished by contract also; it is very like West India rum, and is made by an European contractor. There has been no Native contract for rum within my recollection; it has always been supplied by an European firm.

660. Earl of *Ellenborough.*] You supply the troops with grass-fed bullocks?
Yes.

661. What is the difference of price between a grass-fed bullock, and a bullock fed upon gram?
I do not think gram-fed bullocks are commonly procurable for slaughter purposes. Private individuals and regimental messes fatten them occasionally; but the beef procurable in the markets is generally fed on grass (and perhaps oil-cake) only.

662. *Chairman.*] Is there any dislike on the part of the natives to sell bullocks?
The Hindoos do not like to sell them if they know that they are to be killed, except men of low caste; but there is never any difficulty in getting them on that account, except, perhaps, in the Punjaub and Rajpootana, where the population is mainly Hindoo, and of strong religious feeling on this particular point.

The Witness is directed to withdraw.

Lieut.-General Viscount Gough, G. C. B.

LIEUTENANT-GENERAL the Right Honourable HUGH, VISCOUNT GOUGH, G.C.B., a Member of the Committee, is examined as follows:

663. *Chairman.*] DO you think that any improvements could be made in the constitution of the Indian Army?
There are some improvements that might be very advantageously made.

664. Will you have the goodness to state them?
As Commander-in-Chief of the army, I had an opportunity of seeing a good deal of the different arms; but I am perfectly aware that there are many distinguished officers of the East India Company's service in the Direction, who certainly must know the different arms much better than I do. It strikes me, however, that there might be very material improvement in the Cavalry branch, particularly in the Light Cavalry; the dress and equipment of that arm I think is not such as to make them as effective as they might be. I entirely concur in the views taken by all the evidence I have heard before this Committee with regard to the superiority of the Irregular over the Regular Cavalry. I will give one instance which speaks for itself: during the last campaign in which I was engaged, the soldiers of the Light Cavalry had such little confidence in their own arms, particularly in the sword, that I permitted them to furnish themselves with the native sword; and in the battle of Guzerat I do not think there were 100 men of the Light Cavalry of the Indian army who had not furnished themselves with the Indian tulwar. The arm of the native is not at all like the muscular arm of the European; they cannot well use the heavy sword that is put into their hand: the scabbard of that sword, again, is peculiarly ill adapted for Indian warfare: the military portion of the natives, from their youth, use the sword very much, and they have it peculiarly sharp; but it is quite impossible to keep the sword sharp in the steel scabbards; it is quite impossible for even European Cavalry; they never go into action, but the men have previously to sharpen their swords. The Light Cavalry are a very fine body of men when you see them in the native dress; but when in uniform, they look quite different men, insomuch that you would hardly recognize them. Then the saddle, I think, is very defective: altogether, the Light Cavalry equipment might be very materially and very beneficially altered.

665. Have they any fire-arms?
Yes, they have pistols, and a certain proportion of carbines to each troop; the former are totally useless, in my opinion, and in action they are of no service;

Lieut.-General Viscount Gough, G. C. B.

30th Nov. 1852.

the native is rather fond of firing his pistols when it would be much better for him to use his sword, if he had confidence in it.

666. Earl of *Albemarle.*] Do you think they would be content to change the dress?

Yes, they would be delighted with the change; in short, they get out of their uniform as soon as they possibly can; the moment they are off duty, if you go into the lines or bazaars, you see the soldier in his native dress, and a very fine handsome fellow he looks.

667. Lord *Elphinstone.*] Do you attribute the superiority of the Irregular Cavalry over the Regular Cavalry chiefly to their equipment and dress?

In some measure I think so; but generally the Irregular Cavalry are a better description of men; certainly the Native officers of the Irregular Cavalry are a very superior class; they are Mahomedans of a superior grade. In the Irregular Cavalry regiments it is the practice almost universally, that after three years, if a man wishes his discharge, the officer gives it to him, because he has always a sufficient body of men with him ready and anxious to take his place. I think the pay of the men of the Irregular Cavalry inadequate; they get 20 rupees a month for their arms, accoutrements, finding and feeding their horses, and everything connected with their regiments as sewars; were their pay increased to 25 rupees, no cavalry could exceed them in efficiency and usefulness, both in peace and war.

668. Do not the Regular Cavalry cost three times as much?

I do not exactly know the precise calculation; but I should think certainly one regiment of Light Cavalry would cost nearly as much, if not quite as much, as two of the Irregular; and I consider the Irregulars more effective in the field, from the causes I have before mentioned.

669. Earl of *Ellenborough.*] Are not the Irregular regiments much stronger also?

The Regular Cavalry, I think, have from 550 to 560 men, including officers; the Irregulars have from 600 to 800 men; and, of course, with the greater number, there is naturally a greater expenditure.

670. *Chairman.*] Are there a sufficient number of European officers with the Irregular Cavalry?

The Irregular regiments have a Commandant, a second in command, an Adjutant and Surgeon; but it must be recollected that all those are selected not only from the Cavalry, but from the Infantry arm, and almost universally very judiciously selected; men of high character and professional knowledge.

671. Viscount *Canning.*] If the privates in the Regular Cavalry were allowed to wear the national dress, do you think any inconvenience would result from their being commanded by officers in European uniform?

Decidedly, as it would have the ill effect of marking out the officers to the enemy. The dress of the officers ought, in my opinion, to assimilate with that of their men, as nearly as possible.

672. In the Irregular Cavalry the private soldier is allowed to dress in his national dress?

Yes; each regiment of Irregular Cavalry wears a uniform; but it is the national dress, of a peculiar colour.

673. But still the soldier wears a dress in which he has been used to act, and in which he is at ease?

Yes.

674. Earl of *Ellenborough.*] And the helmet is a native one?

Yes; the head-dress varies; but it is of a native character.

675. Viscount *Canning.*] With regard to the officers of the Irregular Cavalry, how are they dressed?

They are dressed in a fancy uniform of their own, something assimilating to that of the men.

676. In point of fact, there is not the same distinction between the dress of the officers of an Irregular corps and the dress of the men, that there would be

if

Lieut.-General Viscount Gough, G.C.B.

30th Nov. 1852.

if the privates of the Regular Cavalry were put into the national dress, and the officers remained in their present dress?

Certainly not; the European dress and the dress of the officers of the Irregular corps are quite dissimilar.

677. *Chairman.*] Is there any indisposition on the part of the officers to put themselves into a dress resembling the national dress of the natives?

No; I think quite the contrary.

678. Lord *Elphinstone.*] Do not the Natives rise to higher rank and to superior command in those Irregular regiments than in the Regular regiments?

They do in some measure; in each Irregular regiment there are three Rissaldars (or squadron leaders), who have 150 rupees a month, and there are three Reisadars, who have 80 rupees a month. They are very well officered, and the officers are of a superior grade.

679. Do not the European officers associate more with those Rissildars in the Irregular regiments than the European officers associate with the Soubahdars and Jemadars in the Regular regiments?

Infinitely more.

680. And that naturally raises the Native officers in the Irregular regiments in their estimation, and, consequently, in the estimation of the men?

Undoubtedly it does.

681. The *Lord Steward.*] Are the officers holding a rank similar to that of Captains and Lieutenants, Natives?

Yes.

682. *Chairman.*] Do the men obey the Native officers as well as the European?

Certainly; they are most obedient. A Native officer in the Irregular Cavalry has this advantage: the two First Classes, or Captains, are permitted to entertain four men, bargheers, in each troop; the next Class, or Lieutenants, is allowed to entertain two; and the juniors, or Cornets, one; no other man is allowed to have a bargheer.

683. *Chairman.*] What is a bargheer?

A man for whom the Native officer finds a horse; in short, they are so many sowars, for each of whom the Native officer is paid 20 rupees a month.

684. Earl of *Ellenborough.*] Formerly was not the number of bargheers much greater?

I do not know.

685. Lord *Ashburton.*] Has the Commanding Officer of an Irregular corps the full privilege of appointing his own Native officers?

An officer commanding an Irregular corps has almost exclusively the command of his corps, reporting, of course, what he does, and being subject to a half-yearly inspection by the General Officer of Division, who very minutely examines into every part of the corps, and of course would rectify anything that he found wrong in the establishment. But the Commandant has very much the power of acting as he pleases with the corps, reporting what he does to the higher military authorities.

686. Has not there lately been more interference with the Commandants of those corps than there used to be?

No, not the Irregulars, nor, I think, generally with the others. I know there is a feeling abroad that the Commanding Officers of regiments are more interfered with than they originally were; it is a feeling which is rather prevalent, but I do not think justly. Regarding them individually, there are, perhaps, two-thirds of the Commanding Officers of the army who might with the greatest confidence have almost unlimited power; but there are others whom it would be very injudicious to leave without that necessary supervision which there must be in all military bodies.

687. Lord *Elphinstone.*] Is not the necessary consequence of its being a seniority service, that there are sometimes men who rise to the command of regiments who are unfit for the duty?

Lieut.-General Viscount Gough, G.C.B.

30th Nov. 1852.

When a man comes to the rank of Lieutenant-colonel, he must have a regiment; you cannot prevent his having a regiment; and, of course, in a large army of that kind, there must be some men unfit for the duty. In the command of Natives much tact is required; any injudicious interference with their religion, pay, &c. &c., might create a very general bad feeling, and not only bad feeling, but very bad consequences.

688. The *Lord Steward.*] Is not it the case, that sometimes officers are employed upon staff appointments for so many years; that when they come back afterwards to the command of the regiment, they have lost very much the knowledge of the routine of the regiment?

No doubt of it; but I do not see how that can be obviated; it would be a very hard thing to displace an officer of intelligence, filling a staff situation with credit to himself, and usefulness to the state, for the purpose of learning regimental duty. An officer should not be employed on the staff until he has been four years in the service, by which time he must be acquainted with the regimental routine of the junior branch of the service; of course, if he remains 35 years absent, and perhaps never joins his regiment from the rank of Ensign till he gets the rank of Lieutenant-colonel, one cannot conceive that man to be as equally effective an officer as one who has gone through all the regimental grades. I would here wish strongly to impress upon the Committee the extreme inexpediency of granting advantages to officers proceeding to New South Wales and the Cape, and yet withholding them from those going to England. I consider the reverse would be more beneficial to the service. It is hardly necessary for me to point out the superior advantage English society offers over that procurable in the colonies to young men who leave home at the early age of 16, or soon after.

689. Lord *Wharncliffe.*] Does he remain all that time attached to the regiment?

Yes; it is a regimental rotation service until he gets the rank of Lieutenant-colonel.

690. *Chairman.*] Does the Governor-general make the selection for the military staff appointments, or how are they made?

A portion of the military appointments is supposed to be at the disposal of the Commander-in-Chief; of course the Governor-general is supreme: everything must be confirmed by him; all appointments must come before him, and be gazetted by the Government; at the same time, the recommendations for those appointments are always given in by the Commander-in-Chief, and I do not believe that they are ever interfered with; I never knew an instance during the time I was Commander-in-Chief.

691. Lord *Wharncliffe.*] How are the officers in the Irregular Cavalry regiments paid; are they paid higher or lower than in the Regular Cavalry?

The actual pay is, I believe, very much the same. I think the command of an Irregular regiment is the most independent position that an officer can be placed in, in India, and I do not know any appointment that is more desirable, or more desired.

692. How is his pay, compared with the pay of the Regular service?

An officer commanding an Irregular regiment has about 1,200 rupees a month, with the different allowances, though he may be but a Lieutenant; this is about the pay of a Lieutenant-colonel commanding a regiment of Light Cavalry.

693. *Chairman.*] Does he gain any regimental rank?

No; he still remains upon the establishment of his regiment, and goes on in the seniority rotation of his corps, until he attains the rank of Lieutenant-colonel.

694. Lord *Wharncliffe.*] Out of these 1,200 rupees a month, is he expected to provide anything for the regiment?

No, nothing whatever.

695. Are there any half-castes among the officers?

[illegible]ere was one who was a credit to the situation; I am only aware of one

696. Do

Lieut.-General Viscount Gough, G. C. B.

30th Nov. 1852.

696. Do you think there could be any improvement made in the constitution of the Infantry?

I think not; I think the Indian army is nearly perfect. Of course some regiments are better than others; but I must say, and I am proud to say, that I look upon the Indian army as most efficient. There cannot be an army more loyal, better disposed, or more ready to do their duty. I think it unfortunate that in Bengal there are but six or seven regiments enlisted for general service. I am quite persuaded that the natives would as soon enter for general service as for limited. Whenever any unpleasant question arises, it is always caused either by some injudicious management of the Commanding Officer, or some bad working from without; it does not proceed from the soldier. Having commanded in China, where I had both Bengal and Madras troops with me, I had an opportunity of seeing how the fact was. The Native soldiers are very steady men; but a great deal depends upon the Commanding Officer, and upon the confidence which they have in the European regiments with them. In the brigades there are generally a European and two Native regiments, and the selection of the Native regiments to accompany the European regiment is a subject of the greatest moment. It is a well-established fact that where the Natives have confidence in the European regiment they accompany, they will go shoulder to shoulder into action, and never shrink from that European regiment. I have seen in several instances the wonderful attachment of the Natives to the Europeans. When the brigades are breaking up after service, you see the Natives and the Europeans as brothers together. If a European gets drunk (which he sometimes will, though I am happy to say not often), you find the Native will carry him to his quarters, and shield him from detection, if he can.

697. Is it your opinion that the troops are sufficiently officered by Europeans?

Certainly not; I speak in a military point of view. Of course, looking at the question in a financial point of view, much must depend upon whether the finances of the country will admit of an increase; but I have no hesitation in saying that the army would be much more effective if the number of European officers were increased.

698. In point of fact, a smaller number of troops would be more effective if more numerously officered?

I have no doubt of it.

699. Lord *Elphinstone*.] You are aware that the number of European officers has been very much increased of late years?

I am aware that there was a Captain appointed to each regiment during Lord Ellenborough's time, but there was a reduction of three officers some time before; four have been added, but it only adds one Captain, whilst the requirements for staff appointments, consequent upon our greatly extended dominions, have very greatly increased indeed.

700. Previously to 1831 there were but four Captains to each regiment, and now there are six?

Yes, I believe it was so.

701. Lord *Colchester*.] Although there are six Captains upon the strength of the regiment, does it not frequently happen that some of those are detached upon staff appointments?

You seldom have above two Captains with the regiment in garrison; for service in the field, of course the Governor-general always, at the request of the Commander-in-Chief, withdraws from the staff every one he possibly can; that is always most readily done; but still, even then there seldom or ever are above four Captains in the field with the ten companies.

702. *Chairman*.] Is the number of Medical Officers sufficient?

Certainly not. The Medical Officers are so very much detached upon civil duties, that it very frequently occurs that regiments are without any European Medical Officer belonging to the regiment present. It may be necessary to observe, that the sickness in the Native army, except upon very peculiar occasions, and in certain localities, is very much less than in the European portion; still they have all the European officers and their families, the Serjeant-major and Quartermaster Serjeant, with their families, and a thousand Natives, to take charge of.

Lieut.-General Viscount Gough, G. C. B.

30th Nov. 1852.

703. Earl of *Ellenborough.*] Is not the sickness still smaller in the Irregular Cavalry than it is in the Native Regular army?

I could not decidedly answer that question.

704. *Chairman.*] Are the Native regiments always at their full complement of effective men?

Always. They are not only complete, but there are generally several men with the corps ready to fill up vacancies.

705. How do you account for the great readiness which exists to enter the service?

I think the military service in India is a very popular service, they have so many advantages over all other classes of men in their own grade and walk in life.

706. Earl of *Ellenborough.*] Is not their pay more than double the ordinary daily wages of labour?

I do not exactly know; but they never in the Bengal army consume half their pay; the other half goes to their families. The family remittances from the regiments are astonishing; they are remitted through the Captain of the company.

707. *Chairman.*] What other advantages have the Native soldiers?

They have many other advantages, especially the pension. The pension is our great hold on India, and I trust that it will be our great hold in the Punjaub when it begins to work. After the Sikh campaign, the poor wounded soldiers of the Punjaub used frequently to come up to us, and point out the great distinction between the soldiers of the Company's service and those of their own army. There, a man who loses his limbs, or is desperately wounded, gets nothing; in our service he is always very liberally rewarded. I think the pension establishment, though it is a very expensive one, and is a tremendous drain upon the Company, is our stronghold of India: I have no doubt of it. There are several other important advantages, which were detailed by Mr. Melvill, which are enjoyed by the Native soldiers: in short, men in the higher ranks of life are anxious to get a member of the family as a soldier, especially on account of the system of priority of hearing which they have in all the courts of law. It is supposed to be injudicious to keep a soldier remaining in litigation, and, therefore, in case of any litigation, he has a priority of hearing in all the courts. That, I believe, was originally the law; but it was either repealed, or allowed to die away, I do not know which, and it was only re-established a few years ago, and it has a very beneficial effect.

708. It is now in full force?

Yes.

709. Lord *Elphinstone.*] Are not the delays in court so much less than they used to be, that it is not of so much value?

Yes; but it is still a great boon. The Asiatic is dreadfully fond of litigation.

710. *Chairman.*] Are there a sufficient number of Clerical Assistants with the army?

In the field there is but one. We were very happily circumstanced during the last campaign. We had one very effective clergyman, who did the clerical duties very judiciously and very punctually, Mr. Whiting. Perhaps it would be satisfactory to the Committee to be made acquainted with one feature of very great importance to an army in the field in India of late years; it is the very great attention that is paid to what is called the Medical Staff of the army in the field. It was my fortune to serve during the whole almost of the Peninsular war, and I have served through several campaigns in India; but in the Punjaub campaign I do not think that at any one period there was a wounded man without his dooly, nor wanting any comfort it was possible to give him. The attention and assiduity of Dr. Franklin, of Dr. Rennie, and of Dr. M'Crea, the indefatigable Field Surgeon, and of the whole of the medical staff of that army, was the most perfect machinery I ever witnessed. I went round the hospitals generally three times a week, and nothing could be more satisfactory, with the exception of one single feature (how it will be overcome I do not know), the difficulty of procuring attendants for the men. The castes are so various, and in some of the castes

the

Lieut.-General Viscount Gough, G. C. B.

30th Nov. 1852.

the men are so particular, that it was a most heart-rending portion of my duty in going round the hospitals to find men with their tongues out for want of water, while water and everything was in abundance round them, simply from not having men of their own peculiar caste to give it to them. The Commanding Officers of the regiments were called upon, and did everything in their power; but it would be impossible, where there are such a variety of castes, to have adequate attendance for each individual soldier. It often happens that but one man of a caste is wounded. An army would be soon disorganized if, in every action, an effective soldier were to be withdrawn from his military duty to attend each wounded man of his caste; one to every ten I always allowed.

711. Lord *Elphinstone.*] If you had had Brahmins, men of the highest caste, would not all the castes have taken it from them?

No, I think not; nor would the Brahmins perform such duty.

712. Earl of *Ellenborough.*] Will not they all take water from a Bheestie?

No, several castes will not.

713. *Chairman.*] How is the Bheestie paid; is he paid by the Government?

Yes, there are so many allowed. I think there are six allowed to a European Company, and two to a Native Company: they are well paid, and they are a most useful body of men.

714. Is that difficulty of finding attendance upon the higher castes a reason, in your opinion, for enlisting men of lower castes?

No, I think not; I think our army is so nearly perfect, that I should be sorry to see the scale of respectability of the Natives lowered: they are very respectable now. Certainly the Madras army are not of the same high caste. I served with two regiments of the Bombay army during the latter part of the campaign: they are not of the same high caste; but they are very fine men, and they do their duty exceedingly well. The Sappers and Miners, I think, are the most effective men I ever met with; they are very low caste men.

715. Lord *Ashburton.*] You said that the efficiency of a regiment depended very much upon the influence of the Commanding Officer. Does it not frequently happen that the Commanding Officers are shifted from one regiment to another?

Not frequently in the Bengal army; occasionally you are obliged to do it; but in the Bengal army you never displace an officer from his regiment except upon very urgent occasions, and unless he wishes it.

716. Under what circumstances do such displacements take place against his consent?

It sometimes happens, that an efficient commanding officer of a regiment would, from his seniority, fall into the command of a large garrison, when there would be no alternative but to transfer him, or to move his regiment, at a very great outlay. Again it sometimes happens that a very meritorious Major may be with his regiment commanded by a Lieutenant-colonel, whilst in the same garrison a young Captain may be in the command, and enjoying the advantages of the command of a corps. The Major cannot be removed, and under these circumstances the Lieutenant-colonel sometimes is. I believe it has never been done except upon some strong public grounds.

717. Has not an Irregular Infantry been raised in the Punjaub?

Yes.

718. Do you know with what success?

With very great success. I will give you an instance. When the Jullundhur Doab was added to our empire upon the first Sikh campaign, after the battle of Sobraon, four regiments were raised by Lord Hardinge, almost purely Sikhs: they were men either from the Jullundhur, or from the protected Sikh States. With respect to those men, on the breaking out of the second war, I own I was rather doubtful of them, and I ordered them down the country. I thought it injudicious to have them upon the frontier, particularly close to the protected state near Loodiana, and I marched them down to Meerut and to Agra. But four men deserted from those regiments, although the whole of their families and country were in rebellion, not against us, but against the Sikh Government, their own Government. And during the whole time of the operations in the Punjaub the conduct of those men was very exemplary, and in no instance did they ever

Lieut.-General Viscount Gough, G. C. B.

30th Nov. 1852.

leave their ranks. I know, from the reports of their officers, that they had the greatest confidence in them, and that they would be ready to take them into the Punjaub; and there is no doubt that they would have acted with as much loyalty and faith to their new masters as they did to their former.

719. Has not one of those regiments volunteered for Burmah?
I think two; and the Governor-general has most judiciously allowed them to go. I anticipate, from their former conduct, that they will do the service a great deal of honour.

720. Do you think they will be equally efficient with the Regular Native Infantry?
Certainly.

721. Do you think they will be found even superior to the Regular Native Infantry?
From the specimen we had of the pure Sikhs, I think they are a very superior class of soldiers.

722. Should you ascribe that superiority to the class of men of whom those regiments are composed, or to the peculiar organization of those regiments, as Irregular instead of Regular?
To the class of men themselves. The Sikh nation is a very warlike one; I speak of the pure Sikh, Rungeet Sing's army; they are a very superior set of men, thorough soldiers.

723. In case of extending the number of Infantry regiments in any one of the Presidencies in India, should you advise that they should be raised as Irregular or Regular Infantry?
I think our Regular Infantry regiments are very perfect.

724. Earl of *Ellenborough*.] Is not the drill of this Irregular Infantry just the same as the drill of the Regular Infantry?
Yes.

725. Lord *Ashburton*.] Was not the army of Lord Clive commanded in the same manner as these Irregular corps which are now in existence?
Yes, I understand it was so.

726. That was during the most brilliant period of our military exploits?
Yes; but I think the Native States have latterly acquired a far more formidable military character; they are constantly fighting among themselves, and practice makes perfect; there is no profession requires practice so much as that of a soldier.

727. Lord *Elphinstone*.] But had they not a great deal more practice formerly than they have now?
Not the people of the Punjaub.

728. But the people of India itself?
Yes, previous to their becoming subject to the Company's rule.

729. Lord *Wharncliffe*.] Are those Sikh regiments to which you referred in native costume, the same as the Irregular Cavalry?
They differ materially; the head dress is very peculiar; a Sikh never allows a razor to come on his beard, or scissors to touch his hair; we have had a great deal of difficulty in getting a head dress that would not outrage their prejudices, and at the same time not disfigure their appearance.

730. Is the rest of their dress a regular European uniform?
It is more like the dress of our police at home; they have a sort of frock-coat.

731. They wear beards?
Yes.

732. And their dress altogether is different from the Native dress?
Yes, from the usual Native dress.

733. Do you conceive that the observation you made a short time since with resp[illegible] to the dress of the Cavalry, would apply equally to the Native Infantry serv[illegible]n the Indian Army?

I think

Lieut.-General Viscount Gough, G.C.B.

30th Nov. 1852.

I think the Native Infantry soldier is very much cramped up in his uniform; still I do not know that I should recommend an alteration, as it would lessen the resemblance to the European soldier, of which he is very proud.

734. It is not so necessary as it is with respect to the Cavalry?
Certainly not.

735. Earl of *Albemarle.*] Have the beards never been found inconvenient in firing by their being set on fire?
No, I think not. I said there were four regiments of Sikhs in the first instance; I believe there are eight or ten regiments now. The Governor-general has allowed ten men per company of each of the regiments of the line to be recruited in the Punjaub: they find the Sikh regiments very effective, and they have done their duty exceedingly well; they have few of the prejudices of caste, which occasion great inconvenience; for instance, in the Native regiments of the Bengal army every man prepares his own food; he has a ring round the place where he cooks, which by being entered becomes desecrated; the Sikhs have not that prejudice they have two men per company who cook their victuals; of course their baggage is wonderfully curtailed in consequence, and their efficiency greatly increased.

736. Lord *Elphinstone.*] Is it not the fact that there are only three European officers to each of those Sikh regiments?
I believe there are four.

737. You consider that the Sikh infantry regiments are equal, if not superior, to the battalions of the regular army?
They performed their duties as well as any men could during the time I was Commander-in-Chief.

738. Lord *Ashburton.*] Do you think that better care might be taken of the health of the troops?
I could not say that there could; the Government go to the greatest expense in hospitals and in barracks: the new barracks are generally very good for the European portion; they sometimes complain of the food; they are not always satisfied with the beef and the bread they get; but I think that every care is taken: in the hospital they always get the same kind of bread as that used by officers; I allude to the European regiments.

739. First with regard to the barracks and the [illegible] of stations, do you think that the stations are as well chosen with a view to health as they might be?
That is a difficult question to answer; because in India a station varies so wonderfully at different times; for example, Kurnal some years back was considered a healthy place, and suitable for a station; a few years after it was a pest-house: all the regiments that went there, both Cavalry and Infantry, buried a great portion of their men, and the government were in consequence, obliged to give up that station, upon which they had laid out a vast sum of money. I think that with the four sanitary stations we now have upon the hills, at which four of the fourteen European regiments are stationed when not in the field, every care that is possible has been taken. I am not aware of anything that could be done to better the condition of the soldier with regard to his health.

740. Have the European troops been removed from Kurnal?
Entirely; I think there are at present but three officers; it is a station for one of the studs.

741. *Chairman.*] Under what department are the barracks placed?
The Engineer department.

742. What department is at the head of that?
The Military Board.

743. Do you think that the health of the European troops might be benefited by some change in the dress?
It is a difficult thing to say, the climate is so very treacherous at times: if you put a man in a light dress who has been accustomed to wear warm clothing, it is a long time before he can do it with impunity, or his health will permit him to wear it. The perspiration in India is very great, and if you give the soldier a

Lieut.-General Viscount Gough, G. C. B.

30th Nov. 1852.

much lighter dress, he would be liable to injury from exposure. I think one of the great sources of sickness in the European army is, that the men, finding their rooms very hot, go out at night into the verandahs; and they thus bring upon themselves all the injurious effects naturally resulting from such exposure.

744. Have they flannel waistcoats?
Most regiments have adopted flannel.

745. Do not you think the stock is objectionable?
They never march nor go into action with the stock; it is only worn on dress occasions.

746. Lord *Elphinstone.*] They mount guard with the stock?
Yes; but it is taken off in the guard-room, and only worn when on sentry. Certainly the stock is not a very comfortable thing. I may here notice, that I established in the Bengal army a white cover to the cap and forage-cap, and it is universally worn now; at first the East India Company were very much opposed to the Kilmarnock forage-cap, wishing that something should be procured for the soldiers of the manufacture of the country; but after many trials, we could get nothing suitable, and at length it was conceded.

747. Earl *Powis.*] Do the Queen's troops wear that Kilmarnock cap in a campaign?
Yes; and have, I am happy to say, as I established it, derived great benefit from it.

748. *Chairman.*] Have you any observations to make upon the arms which the Sepoys use?
The percussion arm is certainly a very great improvement; but I think the fire-lock now in use is a great deal too heavy for the Sepoy.

749. What is the weight which the Sepoy generally has to carry?
I cannot exactly say at present: during the time I was Commander-in-Chief in India, the system was altered with regard to the carriage of the knapsack, both of the Europeans and of the Natives; and now the Natives have their knapsacks carried for them, both on the march and in going into action: with the European the necessaries are carried in a canvas bag, instead of in boxes, as they were originally; this was established when Lord Hardinge was Governor-general. A man cannot with comfort and health serve in India with the quantity only of necessaries which the regulations allow for the soldier; and we are obliged, therefore, to exceed it to a very great amount in respect of shirts, trousers, and such articles of dress; were it not so, your men would be constantly putting on wet things; therefore we are obliged to have some mode of carrying this excess of things, and we established a bag in addition to the knapsack: indeed, I think the knapsack is very useless in India; it is only for show.

750. Lord *Elphinstone.*] They do not carry the knapsacks now?
They do not carry them.

751. *Chairman.*] Is not one of the objections to lighter arms, that you cannot have a ball of the same weight?
I am not aware that a small reduction of the ball would be of any material consequence if you have it throughout the whole army; but there should be no intermixture of arms, or fatal mistakes might occur with regard to the issue of ammunition.

752. Have you any observations to make upon the Artillery?
No, except that it is quite impossible to have a more brilliant set of officers or a finer body of men than the Artillery of Bengal. I have had opportunities of seeing them in every position; and I must say, of the Natives as well as the Europeans, that a more devoted set of men cannot be found; in short, the Native looks to his gun as a little god; he never will leave it. They are ever ready to do their duty, and have always nobly done it. I think it is a very great pity that although the Artillery has been very much increased, that branch of the service has not been kept in the most perfect state of efficiency as to numbers;

Lieut.-General Viscount Gough, G. C. B.

30th Nov. 1852.

numbers: you cannot make an Artillery-man in a day; it requires length of time, and it is very important to keep up in a perfect state of efficiency an arm that is so much used, and which we find the necessity of employing so much the more, because we are more opposed by artillery than we were formerly; the Native powers have more artillery themselves, and, of course, we must counteract them by artillery. A very great improvement has been made in the Artillery with regard to the employment of elephants in drawing the heavy guns; formerly the weight of metal was not sufficient, so that we lost numbers of men before our guns came into action. By the substitution of elephants, we have now obviated that; our range is fully equal, if not superior, to anything we have to meet.

753. How long ago was that introduced?
The first time it was introduced to any great extent was at Guzerat; the first time we actually brought elephants into action was at Sobraon

754. The *Lord Steward*.] What size are the guns?
Eighteen-pounders.

755. Lord *Elphinstone*.] How does the Sepoy carry his cooking apparatus?
He generally, I think, carries three brass pots himself, and two are carried upon the baggage-cart; the three which he carries are, one to draw water, and two for cooking his food.

756. *Chairman*.] You think that the Artillery could be increased with advantage?
I think most decidedly so, if the resources of the country will permit it; I should say it would be a very great advantage in war, and indeed at all times: you cannot be prepared for, or carry on war, without having an efficient Artillery.

757. Earl *Powis*.] Are many of the Native regiments armed with rifles?
Yes, I think three or four; all the Goorka regiments (the Nepaulese) have rifles; they are a very excellent corps of little men; they are very small; but without much caste, and most useful.

758. *Chairman*.] Have you any observations to make upon the Military Board?
I know nothing of the Military Board; the Commander-in-Chief has nothing to do with the Military Board.

759. You have had no opportunity of judging of its operation?
None whatever; I have never been in correspondence nor in communication with it. I perceive, on looking over the Minutes of Evidence, that Sir Herbert Maddock, in one of his observations about the Commander-in-Chief being a Member of the Council, states, that Lord Gough and the present Commander-in-Chief had, he believed, very seldom sat at the Council Board: now I went to Calcutta on the 8th of August; on the 12th of August I received a communication from the Governor-general, expressing the wishes of the Government that I should go up to Agra to take charge of an army of exercise about to be formed; therefore I had not very much time within four days of my arrival at the place to attend the Council. I think it was something similar with Sir William Gomm, who went up the country immediately he arrived there.

760. Lord *Elphinstone*.] Were you not there two or three weeks?
Yes, I was there two or three weeks, and during that time I never missed the Council one day.

761. *Chairman*.] What is your opinion of the commissariat?
I can only say that during the Mahratta campaign, the Sutlej campaign, and the Punjaub campaign, the army under my command was never one day without its regular provisions; the registered followers were at times obliged to be put upon half rations, which, under the circumstances, was sufficient for them; the unregistered followers always had food sold to them by the Sepoy. The system of the Sepoy selling part of the food provided for him by the commissariat, I consider very objectionable, and I would have prevented it if it had been possible; but that you cannot do: you cannot interfere with what a man does with the food issued to him; but certainly the Native army do most injuriously restrict

Lieut.-General Viscount Gough, G. C. B.

30th Nov. 1852.

themselves in their food, and are not so efficient in consequence. I think the Native army would be more efficient if they expended more upon themselves.

762. Were there not frequent complaints with regard to the commissariat?

I have heard the commissariat much abused; but I must say nothing wrong came under my notice; on the contrary, I found frequently very effective and zealous officers in it; they are less under the control of the Commander-in-Chief than any other department, their appointment resting with the Governor-general. I think they are not sufficiently under the command of the Commander-in-Chief in the field, because there are many things that he cannot interfere with, which would be for the advantage of the service if he could.

763. Are there a sufficient number of Chaplains to attend to the army at the stations?

I think it would be very advisable to have a Chaplain at every station where there are European troops.

764. Is adequate provision made in that respect?

No, I think there is a deficiency.

765. Earl *Powis.*] Are there any stations where European regiments are quartered without Chaplains?

I think not, at least where a whole regiment is stationed.

766. Bishop of *Oxford.*] Can you state the present rule or the present practice as to officers of the army being empowered to perform the duty at places where there is no Chaplain?

No; I never knew an instance of it.

767. You cannot mention any instance of it which came under your own eye?

No, I cannot: I think there is a great deficiency of Chaplains: it was entirely owing to the Governor-general being present with the army of the Sutlej that we had a Chaplain at all; the Governor-general's Chaplain did the duties of the army. In the Punjaub campaign we were very fortunate, as I before mentioned, in having a most effective, hard-working, indefatigable man, Mr. Whiting.

768. Earl *Powis.*] Was the Governor-general's Chaplain the only clergyman with that large army?

At the Sutlej he was the only one.

769. Bishop of *Oxford.*] Was that owing to any accidental cause, or was it the natural working of the present system?

I think it was for want of Chaplains; the Governor-general kindly permitted his Chaplain to do the duties.

770. Are the Committee to understand, that in that case the want was owing to the deficient number of Chaplains, and that the accidental supply was owing to the accident of the Governor-general's Chaplain being there?

I think so: as the Governor-general's Chaplain performed the duties, I did not apply for another.

771. *Chairman.*] When an army, or when any division of the army, takes the field, is any Chaplain of necessity attached to it?

When the army of the Punjaub was ordered to be assembled, I applied to the Governor-general, who arranged with the Bishop to have a Chaplain, and Mr. Whiting was appointed.

772. Then are the Committee to understand, that if you had not applied, there would not have been such an appointment?

I should think it would decidedly have been provided for; I do not think so large an army would be allowed to go into the field without a Chaplain.

Ordered, That this Committee be adjourned to Thursday next,
One o'clock.

Die Jovis, 2° Decembris 1852.

LORDS PRESENT:

The Lord PRIVY SEAL.
Marquess of TWEEDDALE.
The Lord STEWARD.
Earl GRANVILLE.
Earl of ELLENBOROUGH.
Viscount CANNING.
Viscount GOUGH.
Lord ELPHINSTONE.
Lord COLVILLE of Culross.
Lord COLCHESTER.
Lord WHARNCLIFFE.

THE LORD PRIVY SEAL in the Chair.

Evidence on the Government of Indian Territories.

Lieut.-General Viscount Gough, G. C. B.

2d Dec. 1852.

LIEUTENANT-GENERAL the Right Honourable HUGH, VISCOUNT GOUGH, G.C.B., a Member of the Committee, is further examined as follows:

773. Lord *Elphinstone*.] YOUR Lordship has had under your command in the field troops belonging to the armies of all three Presidencies?
I have.

774. Those troops, I believe, differ in their physical appearance and their habits and character, and in their mode of living, no less than in their dress and discipline?
There is a very material difference between the armies of the three Presidencies, particularly between that of Bengal, and those of the other two Presidencies.

775. In your experience, did those differences ever occasion any detriment to the public service?
None to the public service, decidedly; but I found very great difficulty in arranging for provisioning the different arms in China. The Madras troops eat a different food, and we are obliged to have different condiments for them from what we have for the Bengal troops. That occasioned some difficulty; but the public service did not at all suffer from it. They were fed by their own Commissariat.

776. Do you believe that it is possible to establish uniformity between the armies of the three Presidencies in all those respects in which they now differ from each other?
I think it would be very dangerous to make changes in the Native troops; they are very tenacious of their own customs; and any change, even for the better, is not cordially received by a Native. He has always some apprehension that there is something behind the scene.

777. In fact, in some of the most essential points would it not be impracticable?
I do not say it would be impracticable; but it certainly would be very injudicious.

778. Do you think that it conduces to the good of the service to attempt assimilation in minor points, when it is impracticable, or at least would be highly injudicious, in essential ones?
I certainly think it is injudicious to put any value upon minor points when you cannot assimilate in all, which you cannot do; it is impossible, from the characters of the two armies.

Lieut.-General Viscount Gough, G.C.B.

2d Dec. 1852.

779. Such points, for instance, as the substitution of Bheesties for Purkallies?

That was very unpopular indeed. I happened to command the Madras army during the attempt at that measure, and it was very unpopular.

780. And, to take another instance, by the abolition of regimental armourers, the arms being repaired by Ordnance artificers not attached to the corps?

I forget why that change was proposed; but I know it created a great deal of observation at the time.

781. *Chairman.*] Was that really a matter of economy?

The economy was very small, if anything, as far as I can recollect.

782. Lord *Elphinstone.*] Have not the only instances of discontent of late years in the Madras army arisen from measures intended to assimilate the practice and the pay and allowances of that army to those of the Bengal army?

I cannot well answer that question, as I have not commanded the Madras army since 1840, except that portion of it which was with me in China; therefore I cannot be competent to give an opinion as to what dissatisfaction has occurred.

783. As far as your own experience goes, which is considerable, in the Madras army, as well as in Bengal, is it not the fact that the only causes of discontent that you ever knew of arose from those measures of assimilation?

In the Madras army, in the whole of the Mysore division, which I had the good fortune to command for some years, I found very little discontent. I had an opportunity of ascertaining that at every half-yearly inspection, when, of course, you are obliged to ask the soldiers whether they have any complaints to make; and I think I had but one or two instances. Some trifling things always will occur, which are explained by the officer commanding the division. The only case I had of any serious complaint was from a soldier of Cavalry, at Bangalore, who stepped out, and made a very improper complaint, in a very improper manner. I have seen very few instances of dissatisfaction; indeed I have seen none but the above-mentioned one. The army appeared to me to be extremely well-disposed to the Government.

784. Lord *Wharncliffe.*] Is there any limitation whatever upon the authority of the Commander-in-Chief of India over the Commanders-in-Chief of the other two Presidencies?

The Commander-in-Chief of India is Commander-in-Chief of all Her Majesty's Forces in India; but he has nothing whatever to do with the other Commanders-in-Chief with regard to the Native armies of their Presidencies.

785. Would the Commander-in-Chief of India have any authority to issue an order for the movement of troops in the other Presidencies?

No; all that proceeds from the Government. Very frequently the Governor-general sees occasion for the movement of troops, and it is merely communicated to the Commander-in-Chief in Bengal that such measures have been proposed, and carried through.

786. Would the Commander-in-Chief of India have a right to send for any of Her Majesty's regiments from the other Presidencies?

With the concurrence of the Governor-general.

787. But without any reference to the Commanders-in-Chief of the other Presidencies?

Courtesy would, of course, lead him to communicate with the Commanders-in-Chief of the other Presidencies.

788. From your experience as Commander-in-Chief of India, do you think that in any respect it would be desirable to give the Commander-in-Chief of India a certain authority over the entire army of India, including the armies of the two subordinate Presidencies?

I never found any inconvenience as Commander-in-Chief in India, nor, I believe, have any of my predecessors: I was there in very troublous times, and I never found the slightest inconvenience.

789. Earl of *Ellenborough.*] All the armies of all the three Presidencies are equally under the absolute control of the Governor-general?

Entirely;

Lieut.-General Viscount Gough, G.C.B.

2d Dec. 1852.

Entirely; the Governor-general is supreme.

790. *Chairman.*] You mentioned that the Madras army was attended by its own Commissary in China; were those expenses charged to the East India Company?

The pecuniary part of the transactions came very little under me. The Crown paid for the whole of the expenses; or rather the Chinese paid, because the whole of the money was reimbursed by China. The whole China war did not cost the Government, nor the East India Company, one farthing, the Treaties of Canton and Nankin having provided for the repayment of the whole of the expenses of the war.

LIEUTENANT-GENERAL SIR CHARLES NAPIER, G.C.B., is called in, and examined as follows:

Lieut.-Gen. Sir C. Napier, G.C.B.

791. *Chairman.*] YOU have been in India a considerable time?

Yes, I have been twice in India.

792. You have had opportunities of observing the state of the Native army in the different Presidencies of India?

I have had opportunities of observing the state of the Bombay and Bengal armies more particularly; and I had under my command a few of the Madras army.

793. Will you state your opinion of the army generally?

My opinion of the army generally is, that it is a very fine army; but that there are certain points in the construction of that army which paralyse its efficiency very much, and would do so much more if the army were engaged with an active enemy, which ere long may happen. I think that one of the great inconveniences of that army arises from the want of a staff corps. The general staff of the army being very numerous, it withdraws from regiments of the line such a large number of officers as not to leave enough for the regimental duties of those regiments; and the consequence is, that the regiments lose their discipline; the senior officers are generally drawn away, and inexperienced men get the command. Were the general staff of the army formed into a corps it would prevent this evil; but such a staff corps should be established on a low rate of pay, so as not to make it in a pecuniary view worth the while of regimental officers moving heaven and earth to get away from their regiments, as they now do, to be on the staff; but sufficient merely to cover the extra expense to which living alone, without the advantages of being with a regiment, may put them. By this means, only such officers as really wish to study their profession, and feel confident in their own abilities, will try to get upon the staff. I think if a staff corps were so established, it would very much relieve the draught upon marching regiments. I would not object to regimental officers exchanging into this staff corps backwards and forwards; but I would always fill up any vacancy in a regiment occasioned by an officer being drawn for the staff. Therefore it would certainly increase in some degree the expense of the army; but I think the effect produced would be fully worth all the increase of expense. The next observation that I have to make, is with respect to the Artillery, which in rank is the first arm of the army. The Artillery is not sufficiently officered; and the number of Horse Artillery troops in the Indian army is too large, I think; there are about 23 troops of Horse Artillery; Bengal, 13 troops; Madras, 6 troops; Bombay, 4 troops; this proportion is too great. I think, myself, that the Horse Artillery is a useless arm. Well-horsed field batteries are perfectly equal to any work that I have ever seen an army require in India. I would, therefore, reduce the quantity of Horse Artillery, and increase the number of officers; so that the Foot Artillery might be well officered, which it is not at present. It is very deficient in officers; so much so, that during the whole time that I was Commander-in-chief I never allowed an officer of the Artillery to be put upon the staff out of their own corps, except two, whom Lord Dalhousie especially ordered, because of their knowledge of some particular work that he had in hand. Those were special cases. The Indian Artillery I really think is the most efficient Artillery in the world. Its practice is admirable; I have seen a good deal of it; and I think I can confidently appeal to Lord Gough to say that

there

Lieut.-Gen. Sir C. Napier, G.C.B.

2d Dec. 1852.

there is not anywhere to be found more perfect practice with round shot and grape, and shells, than in the Indian Artillery. The Royal Artillery may be superior as a scientific corps; but as a practical corps in the field, in crossing mountains, jungle, rivers, and in everything that Artillery can be called upon to do in the field, I never saw anything better than the Indian Artillery; but it is deficient in the number of officers necessary.

794. Lord *Wharncliffe*.] Will you be so good as to explain your reason for the statement that you made, that you thought the Horse Artillery a useless arm of the service?

I was wrong if I said it was useless; but I think it is not of that value which is generally attributed to it, and that it is not desirable to have so great a mass of it as there is in the Indian army. I think a well-horsed battery will keep up with the Infantry and Cavalry anywhere. In charges of Cavalry, you do not require Artillery. After a charge of Cavalry, if it weakens the enemy, you do not require Artillery. The Cavalry pursues its success; you require Artillery before the enemy is dispersed by the Cavalry, to break the masses; but you do not require it to follow the Cavalry in a charge everywhere. A well-horsed battery, with 125 or 130 horses to it, will take your guns anywhere, allowing for all accidents.

795. Then your objection to that description of force is one of a general nature, and not one that peculiarly applies to the nature of the warfare in India?

It is one of a general nature, but I have seen more of it as a Commander in India than anywhere else; and I certainly did not find that I required Horse Artillery to do anything that a well-horsed battery could not have done equally well.

796. Earl *Granville*.] Is it not the fact, that some of the great European armies have no Horse Artillery?

I believe they have not; but I am not very well versed on that subject. I believe since the peace they have made very great changes in their arrangements.

797. Earl of *Ellenborough*.] At the time the Horse Artillery was made so strong, was not the Foot Artillery drawn by bullocks?

I believe a great portion of it was; and I believe it is still in some places.

798. Viscount *Gough*.] Are not the Horse Artillery selected men of the whole Artillery arm?

The whole Artillery is squeezed to make troops of Horse Artillery; that is the real fact.

799. And better horsed than any other, because after the Governor-general's body-guard, they have the first pick of the horses from the whole of the studs?

Yes.

800. The Horse Artillery are armed with six-pounders, instead of nine-pounders, which the Horse field batteries are armed with?

Yes; the rest of the Artillery is ruined for the sake of the Horse Artillery, and I think that is a great pity. Fine dresses and six-pounders charging are pretty things, but are not wanted on a campaign. There is very little galloping in a march of 60 miles in 24 consecutive hours.

801. Earl of *Ellenborough*.] Is there not a material difference between the range of the six-pounders drawn by the Horse Artillery, and of the nine-pounders drawn by the field batteries?

Yes; there is a considerable difference, both in the range and in the accuracy of the fire. The advantage is in favour of the nine-pounders, except where you have to do with a very mountainous country, or with an enemy whose Artillery is inferior. When in Scinde, I found the six-pounder as heavy a gun as I required. We could not have managed nine-pounders so easily in the Cutch Gundava Hills. You can get up three-pounders and six-pounders, where you cannot get nine-pounders so quickly. Three-pounders, though very inferior weapons, are better than none at all. I have always observed, both in European and Indian war, that the soldier's first idea is "There is a gun;" they never consider whether it is

a nine-pounder

Lieut.-Gen. Sir C. Napier, G.C.B.

2d Dec. 1852.

a nine-pounder or a six-pounder, but they grow nervous. They say "There is a gun," and they wish to get out of its range; they well know, that whether it be a three-pounder or a twelve-pounder, it finishes whoever it hits, and that the enemy would not bring it there unless its range was sufficient to do mischief. But there is no question of the nine-pounder being the best gun we have as yet.

802. Were your guns in the hills drawn by horses, or by mules?
By horses; I had some mules, but I had not very fine mules.

803. Viscount *Gough.*] You had no elephants?
I had one or two, but we had not many elephants there.

804. Are not they found to be very useful?
They are exceedingly useful. Lord Hardinge established a train of elephants; but the elephant does not like going into action, being an exceedingly wise animal.

805. Lord *Elphinstone.*] Was there not also a troop of Camel Artillery?
I had a troop of Camel Artillery at Meanee, and they did very well; but they will not do where the ground is stony and hard, nor where the ground is slippery. In moving upon Imaumghur I came to a steep hill, and we could not have moved had I not put the Grenadiers and the Light Infantry of the 22d, and they drew the guns up the hill in no time; but otherwise we must have remained helpless; we could not have moved. When a camel has to mount a steep acclivity in wet weather, he will often go down on his knees, and so get up it; but he could not draw a gun in this manner.

806. *Chairman.*] Have you any observations to make upon the Cavalry?
With respect to the Cavalry there is one alteration which is absolutely necessary. I speak with due respect before Lord Gough, who has seen so much of it, but I am sure he will agree with me, that the Cavalry in India must be gelded; it is of no use to employ stallions in war; they are not fit for it; they are incapable of going through heavy work; they are good for nothing; they are neither good for night work nor day work, nor in short for any work at all; they are mischievous in war.

807. Lord *Elphinstone.*] Are not the gelded horses of India more apt to knock up?
No; they are strong; I believe in the Madras Presidency they have been trying gelded horses. I think they made many experiments, and I understand that it fully answers with both Cavalry and Artillery. In the first place, the use of stallions prevents your making a night's march secretly; you are discovered directly by their neighing; and if, in the season for covering, any mares come in sight, after the hardest day's march, when the animals require rest, they will neither eat nor rest if they see one of them, or even see a gelding, for they seem to be as much excited by geldings as by mares. A whole regiment may be kept in a state of agitation by the sight of one mare; and if they are thrown in among you by the enemy, 10,000 Cavalry may be dispersed in half an hour.

808. Earl of *Ellenborough.*] Is not the camp sometimes disturbed by one of those stallions getting loose at night?
Constantly; I never saw so inefficient a horse for war, except for single combat or a race, where a great exertion of muscular power is required for a very short time, as a stallion. At Chillianwallah, one of our finest men had both his arms cut off, unable to defend himself, both his hands being employed on his bridle, vainly trying to govern his stallion, which met a mare in the charge.

809. *Chairman.*] Is not it the practice in the French service to have stallions?
I believe not; the French horses are geldings; I have seen a few taken; they were all geldings in the Peninsula.

810. Lord *Elphinstone.*] You said that they sometimes get loose at night; do you think the mode of picketing them is good, by tying their legs?
There is no other mode of holding a stallion; you must hold his legs and his head, otherwise he gets out.

811. That would not be necessary with geldings?
No; a gelding will also bear more fatigue. I have taken the opinion of

General Hunter and Sir Walter Gilbert, and a variety of officers distinguished for their knowledge of horses, and I have had some little acquaintance with horses myself. I went to India thinking that stallions must be the finest horses in the world for war, if you could manage them; but I found I was in error. The whole of the India Cavalry officers are, I believe, decidedly against having stallions.

812. Viscount *Gough.*] Are you not aware that in many of the Irregular Cavalry regiments they have horses and mares working together in the same regiment?

Yes, they have; but they have a great deal of trouble; they manage them differently, perhaps; but all the Desert tribes, as far as I have seen, use mares.

813. Lord *Elphinstone.*] Are not the stud-bred horses supposed to be vicious?

The stud-bred horses are generally reckoned vicious, and that makes me think that we should have no studs in India at all. A stud horse costs about from 900 to 1,000 rupees, about 100*l.*, before he is efficient as a war horse, really complete and ready to do work. I established a fair under General Hunter, which was afterwards abolished, at Sukkur, and there I got as many horses as they could want for the whole Indian army at from 350 to 450 rupees a-piece, broken in and everything complete. General Gilbert, and General Hunter, who was for 10 or 15 years at the head of the studs in India, told me that they were the finest horses they had. I believe these two General Officers, Hunter and Gilbert, know more of horses, and are better judges of them, than any Englishmen in India, perhaps than any natives.

814. You are aware that the Gulf horses and the Arabian horses which are bought at Bombay cost a great deal more than the sum you have stated; that they cost about 600 rupees?

Yes; but they have a long voyage, and a great deal more difficulty in getting to Bombay, where there is a great demand, and, of course, higher prices. Those that go to Sukkur have no sea to cross, and they sell their horses cheaper. You can always contract, for about 450 rupees, with Australia, for excellent horses. At the Cape, I do not know the price; but I know that the horses from the Cape are excellent.

815. Earl of *Ellenborough.*] Could not you get Turcoman horses by establishing a fair at Peshawur?

Yes.

816. Lord *Elphinstone.*] Would not there be a great economy in providing horses for Bombay at Sukkur, instead of buying them at Bombay, because they would only cost half the money?

Certainly; the depôt for Bombay horses ought to be at Sukkur, Hyderabad, or Kurrachee.

817. Viscount *Canning.*] Were any of the horses bought at the fair geldings?

No, they were generally stallions; but you can get any kind you like.

818. If it were known that the service preferred geldings to stallions, would the natives in time be induced to geld the young horses, and bring them to market?

Yes, they would directly; but it may be done as well by our own people.

819. Viscount *Gough.*] What is your opinion of the New South Wales horses?

I do not know them myself personally, but the officers of Artillery and Cavalry generally liked them very much; they are very good, I believe, and very hardy.

820. *Chairman.*] What is your opinion of the Cavalry accoutrements?

The Cavalry accoutrements might be, I think, assimilated more to the Indian style than they are at present; everybody knows that the natives like their own swords.

821. Viscount *Gough.*] How do they like the sabre of the Light Cavalry?

They do not like it; they do not like the steel scabbard, because it takes off the edge of the sword, and is heavy; I think it bad; the wooden scabbard is better in countries where there is not much rain.

822. The

822. The Sepoy does not like it?
No; and the pistols are of little use; carabines are useful on many occasions.

823. Lord *Elphinstone.*] What is your opinion as to the respective merits of the Regular and Irregular Native Cavalry?
I think the Irregular Cavalry and Infantry are both in very superior order to the Regulars. The reason they are so, is, because their officers are all selected. There are only two or three officers to each regiment, but they are selected for their energy and ability; they are in full strength and health, and full of life; men of 25 to 30 or 35 years of age; they go to their work with a will, and they do it exceedingly well; whereas in the regiments of the Line there are 20 or 30 officers, but they are not selected officers, and they are commanded generally by one of those Indian Lieutenant-colonels who are generally gone by before they get to the rank of Lieutenant-colonel; and even those that can yet work are constantly moved from their regiments. Some of them are perfectly worn out in body; I suppose many are as old as I am, nearly.

824. Is not the Irregular Service more popular with the natives, and filled with a better class?
The Irregular Service is filled by a better class of men, very likely; but I do not think that is the cause of the difference; it is the having a young officer to command, who seeks to know his business, and has strength to do it; that is the whole secret of it, I believe.

825. Earl of *Ellenborough.*] Is not this one material cause of the difference, that from the limited number of officers in an Irregular corps, the European officer has no European society to divert him from his military duties?
There is a great deal in that; but he is a younger and cleverer man than the commander of a regular regiment placed in that command by seniority; they are the picked men of the service.

826. Viscount *Gough.*] Are not the native officers, the Russeldars and so on, a higher grade of men than the native officers of the same rank in the Regular regiments?
Yes, generally; but I consider the native officers of the Regular army very good, though, like their European commanders, somewhat too old for their rank. This is the weak point of any service in which promotion goes by seniority; young blood is wanted for war.

827. Lord *Elphinstone.*] They are not selected by seniority in the Irregulars, as they are in regiments of the Line?
No; but the natives are very good in both.

828. Lord *Wharncliffe.*] What is your opinion with respect to the assimilation in some degree of the uniform and accoutrements of the Regular Native Cavalry to those of the Irregular regiments?
I think that would be desirable, because I have understood that the natives like the Eastern saddle better than they do ours, and they certainly like the native sword better; it is lighter; our Dragoon sword is very heavy. Now the native prefers the lighter sword, and he thinks more of a Damascus blade than he does of a Birmingham blade; not that I believe it is a better blade, nor so good, generally, but he likes it better.

829. Do you think that the native would be a more efficient soldier on horseback if his dress was more like his ordinary native dress?
Yes. I think we have assimilated their dress too much to our Cavalry dress, considering the climate; they are buttoned up too tight.

830. Earl *Granville.*] With whom would rest the power of ordering alterations in the details you have mentioned, such as employing geldings instead of stallions, and changing the dress, and the saddle, and the sword?
With the Court of Directors.

831. Not with the Commander-in-Chief?
The Commander-in-Chief has absolutely no power in India; at least I had none; I do not know what Lord Gough had.

832. *Chairman.*] Have you any remarks to make upon the Infantry?
I think the Infantry require more officers. I admit that a great deal of mischief

Lieut.-Gen. Sir C. Napier, G.C.B.

2d Dec. 1852.

chief is caused by their being drawn from intercourse with native officers; the way in which they have separated themselves now is most dangerous, and there is no doubt that in a great measure it arises from the number of officers. But I really do not see any way of correcting the evil, for as the officers are not selected, but you must take the cadets as they come, I do not think we could do with fewer officers with the Infantry regiments. I have seen them, when each European officer, being in front, kept all firm; without them I believe the Sepoys would have given way. We have got into the habit of exalting the Europeans so far above the natives, that it now becomes almost a matter of necessity to have them. I think that, had I remained in India, I could have so raised the Sepoy spirit to a just confidence in themselves, that I would not have objected to go into action with Sepoys alone. When men are run down, and hear it daily said that they cannot meet an enemy without they are supported by Europeans, they begin to believe it; but it is a palpable fallacy. If well drilled, the Sepoy is a brave and stanch soldier in action. If you want to make our officers and the native officers mix, there is now but one way of doing that: it is by giving the native officers the rank with our own; but I should say that it would require a great deal of consideration before that is done. You are bringing them in in the Civil Service, I believe, and it is just; but how far that can be extended with safety to the Indian army I will not say; it is a question of policy, not of discipline.

833. Lord *Elphinstone.*] In the last century, were there not instances of very distinguished native officers in the Indian army?

There were men of immense intellect and knowledge of their work among the natives; Hyder Ali Khan, and many others; they are exceedingly clever and exceedingly courageous. In our Sepoy army they rise from the ranks by seniority. The other day I was very much attacked by Indian papers because I issued an order preventing Colonels of regiments from selecting soldiers for promotion to be non-commissioned officers and to be officers out of their regular tour of promotion, without any ill conduct on the part of the men that were passed over in the line of seniority. I was obliged to stop that, because the men of the Bengal army enlist with a pledge on the part of the Government that they are to look to seniority for their promotion, and it would have been a complete breach of the promises of the Government to those old and respectable men to be put aside, merely because the old gentleman commanding the regiment, who perhaps is a great deal worse soldier than they are, chooses, at the instigation of an Adjutant or a drill-serjeant, to pick a man out of perhaps 20 or 30. The case that brought my order out was, that a man was chosen for promotion who was the 217th on the list; he was put beyond the others without fault on their part, but that they were not smart; in short, they were not in favour with the drill-serjeants and the Adjutant. The order which I gave was to insist upon the rule of seniority, under which they enlisted, being kept to. It was only a repetition of one that had been issued before by General Fane, and confirmed and issued by Lord Gough. But this produced great anger, and it was said that the Bombay army was superior, in consequence of having young officers and non-commissioned officers. It is very true that the Bombay army is superior in that respect, but they have not enlisted under that promise of promotion by seniority in the Bombay army. In the Bombay army it has been the habit for years for the European commanding officers to select whoever they chose for promotion; but that has not been the habit in the Bengal army; and I am convinced, that if such a breach of promise had not been stopped, we would have run great risk of producing a dangerous and just dissatisfaction throughout the whole of that army. Therefore I issued this order, at the request of Colonel Tucker, the Adjutant-general, Colonel Grant, who had been just before Adjutant-general, Sir W. Gilbert and Sir Hugh Wheeler, one of the best officers that I met in the Indian or any other army. The whole of those officers not only concurred, but they initiated this order. I studied it much, and, finally, I issued it. It created very great discontent, but I am sure it is necessary, because, in case of mutiny, if all those officers and non-commissioned officers had been young and ambitious and energetic men, they might in a mutiny take a very active part; and if they had, on a crisis which had just then passed, it would have been very serious. I think the safety of India, under the present system, depends upon those officers; those officers, in the present system, are

looking

looking for their pensions, and will not join in mutiny; they have too much at stake.

Lieut.-Gen. Sir C. Napier, G.C.

2d Dec. 1852.

834. Earl *Granville.*] Admitting the perfect justice of your order, what do you think, for the future, would be the most expedient course with regard to repeating those promises of promotion by seniority?

That is a very difficult question to answer. I think it is good for the efficiency of the army that they should be young, but what turn their youthful energy may take I cannot say.

835. Lord *Elphinstone.*] You are aware that the rule applies only to the Bengal army, and not to the Madras and Bombay armies?

With respect to the Madras army, I do not know; but the Bombay army is a small army, which has always been very much mixed with the Queen's troops, and they have taken our system for years past. The Bombay army has never mutinied, but if it had, it is full of officers and non-commissioned officers who are fully as well instructed as our own in their duty, and who are very ambitious. Whether it may tend to good or to evil I cannot pretend to say; it depends on circumstances that cannot be easily foreseen.

836. Viscount *Gough.*] Are not the situations of Subadar and Jemadar in the Bengal army to be regarded rather as a reward for past services and good conduct than as connected with the performance of any great duties in the regiments, considering the time of life to which they have come?

Yes; in the Bengal army they are very old, but they do the duties, such as they are. The chief service that I have seen with the Bengal troops alone was in the Cutch Gundava Hills and in the Kobat Pass, and those old officers did their work well. My opinion is, that young and energetic non-commissioned officers may be dangerous or useful according to circumstances; in an army all depends upon its leader; what is danger under one leader, may be safety under another.

837. Have you anything further to suggest with respect to the Infantry?

There is one other point upon which I have a very decided opinion, and that is, that the weight of the muskets for the Infantry ought to be reduced; the Indian Sepoy is not equal to the weight of our musket; when you see a sentry present arms, he does not present arms as one of our men does, with the body perfectly steady except the arm; the Sepoy is obliged to work his whole body to get his musket up, and to work his body to get it back to his shoulder again. I would not reduce the bore in the least, but you may reduce the musket to a very light weight; I have a musket which is four pounds and a half weight, and I can fire it like a pistol; and it is strong withal.

838. Viscount *Canning.*] Is that an English arm?

Yes; it happens to be a very old fowling-piece.

839. Are the muskets which the Sepoys at present have, exactly the same size and length as our muskets?

Exactly; I am not aware of any difference.

840. Viscount *Gough.*] In reducing the weight of the musket, would you recommend the bore to be reduced?

No, I would have the same bore; I am quite against any reduction of the bore of the musket.

841. Lord *Wharncliffe.*] How would you lighten the weapon?

In the brasses and in the wood-work; there are various ways in which it may be lightened; the locks may be lighter and better.

842. Marquess of *Tweeddale.*] Would it not be inconvenient to have two different bores in the army, and so to have to serve out in action ammunition of two different bores?

Yes; you should not have two ammunitions in action; if you have, people would be bringing up a supply of large ammunition for the regiments armed with fusils of small bores; it is very dangerous to have small arms of different calibres.

843. Lord *Elphinstone.*] Would there be any objection to having lighter muskets for the Europeans?

I think, generally, lighter muskets for the whole army would be advisable.

Lieut.-Gen. Sir C. Napier, G.C.B.

2d Dec. 1852.

844. Viscount *Canning*.] Do you know the French musket?

I used to know it; I do not know it now; formerly it was lighter than ours and had a smaller bore. Sir Charles Bell, the celebrated surgeon, told me that after Waterloo he went off to Brussels and had charge of the French Hospital there, and he made a collection of bones of Frenchmen fractured by British balls, and of bones of Englishmen broken by French balls, and he told me that the fractures by the British balls were tremendous; it was a complete smash of every bone, so that the man could not get into action again after it; he was obliged to lie on the ground; whereas the Englishmen's were merely cracked and broken with less violence.

845. Might not the powder have something to do with it?

No, it is the weight of the ball; the French musket is a small one.

846. Lord *Elphinstone*.] There are other parts of the equipment of the Sepoy; does he not carry a great quantity of pots and pans and cooking utensils with him?

An immense number; they should be all lightened; but that every commander can do; I lightened them at once in Scinde.

847. You could not get them to take a small quantity of those things?

No, but I restricted it; they would carry anything; if they find a rag they put it up directly, getting such a collection of baggage as nobody ever saw; indeed the whole baggage system is heartbreaking to a commander.

848. Marquess of *Tweeddale*.] Have you ever made any particular observation upon the stock of the muskets of the Queen's service and of the Sepoys?

No, I never made any particular note of it.

849. Are you aware that they are all in one form?

I believe they are.

850. Of one length and of one degree of bend?

Yes, I believe they are, generally speaking, as nearly as in such an immense number you can expect; there may be a little difference in the bend of the stock.

851. You are not aware whether there is or is not?

No, I am not aware of any systematic difference.

852. Then the long-armed men and the short-armed men are obliged to use the same stock?

Yes, it would be better otherwise, perhaps, but I do not think it of much consequence.

853. *Chairman*.] You have stated that you thought there was a deficiency of officers in the Infantry regiments?

I think there is; I think every company ought to have a Captain, which it has not in India.

854. When the regiments go into the field, are not all the officers recalled from the staff?

Yes, they recall those that are employed; but they are of no use when they come, because they know nothing of service in the field as regimental officers, and have probably forgotten their drill.

855. Marquess of *Tweeddale*.] How many years' service must officers have before they can be put on the staff?

I think three; five would be better.

856. And they remain on the staff till they get what rank?

They remain on the staff as long as they have interest to keep them there.

857. What rank in the regiment would put them off the staff?

I am not aware that any rank would put them off, unless they hold a very low situation.

858. Earl of *Ellenborough*.] Nothing would put them out of a political appointment?

Nothing whatever, but quarrelling with the Governor-general.

859. *Chairman*.]

Lieut.-Gen. Sir C. Napier, G.C.

2d Dec. 1852.

859. *Chairman.*] Have you any remark to make on the baggage system?
I think that unless there is something done about the baggage, the Indian army never can move in war as it ought to do. Lord Gough can tell your Lordships how he was hampered. I was told by the General who commanded the baggage at Chillianwallah that it was five miles from one flank of the baggage to the other, and I think he said it was very nearly 20 miles in length on the march; but I will not be positive as to this last. I never saw the Indian army move with a reasonable quantity of baggage, although I took every pains to reduce it as far as I could, and I believe that the having a baggage corps is the only way to organize it, be its size what it may.

860. Lord *Elphinstone.*] You established a baggage corps?
I established a baggage corps, which worked perfectly well; we had a baggage corps with the Bombay troops in marching up to Peshawur, and they were always ready with the baggage and food, and everything, by the time the men halted, and it answered perfectly during the whole siege of Moultan; camels brought the ammunition up to the batteries, and to the men engaged, and it answered in every way. I had reports of it from everybody to the same effect. Lord Melville can state to your Lordships exactly what was the result of the baggage corps as regarded the troops under his orders in that campaign.

861. But there was none in the Bengal army?
No, there was none in Bengal.

862. Viscount *Canning.*] The proportion of camp-followers to fighting men is very large in the Indian army?
In the Bengal army there are five camp-followers to one of the fighting men; I took great pains to ascertain the number, as nearly as such a matter can be ascertained; in the Bombay army there are three camp-followers to one fighting-man.

863. Do you think that an unreasonable proportion?
I can hardly say that it is unreasonable according to the system that is carried on, but I am sure it ought to be regulated. The great thing that Indian baggage wants is to be organized; you can move twice the quantity with organization that you can without it.

864. If it were organized, do you think one of the results of such organization would be to reduce the number of camp-followers very much?
Yes, I think it would reduce it very much.

865. You say that the camp followers are five to one fighting man in the Bengal army; are those registered, sanctioned camp-followers, or are they unregistered?
Altogether, there are five mouths to feed that do not fight, for one that does.

866. Viscount *Gough.*] That number includes all the followers of the army?
Yes.

867. You are aware that the army carries with it food for the horses and food for all the animals that accompany it?
Yes, sometimes; not always.

868. The number you have stated comprises the whole machinery of the army when moving?
Yes, all; the attendants of the bazaars included.

869. Lord *Elphinstone.*] Are there not some circumstances connected with the country which render a much greater proportion of baggage absolutely necessary in India than in Europe?
Certainly; for instance, you must have tents in India always.

870. For instance, there is no such thing as going into quarters; you cannot quarter your troops in a village there, as you can in Europe?
Certainly not; you encamp always.

871. Therefore you must carry tents?
Yes; but we always reckoned in the Peninsula, that the worst thing that could happen to troops was to be quartered in a town or a village; it always produced sickness; we preferred bivouacking, though we had no tents; you cannot do that in India; you cannot go without tents in India; it is impossible.

Lieut.-Gen. Sir Napier, G.C.B.

2d Dec. 1852.

872. Earl of *Ellenborough.*] Would not one consequence of having a baggage corps under regulation be, that the weight to be carried would be much more equally and fairly divided among the animals?

Yes; that is one great use of it; it prevents the camels being overloaded; the Bengal camel can carry 400 lbs. pretty well; the Bombay camel cannot carry above 300 or 350; now I have often taken eight or nine cwt. off a camel. The Sepoy loads them without mercy, and so does the English soldier; but the English soldier is apt also to beat the camel and ill use it, and sometimes licks the camel driver into the bargain, if he interferes, unless the Provost Marshal is very alert; in short, there is a general system of ill-treatment of the animals. Now the baggage corps would organize the whole, so that these evils could not happen. In the corps I made, I established a rule that every bit of baggage beyond a certain weight was to be immediately taken off by the baggage police, and burnt on the road-side; but it requires that sort of rigour to enforce such necessary discipline; you cannot do it otherwise; both officers and soldiers will load the animals more than they ought, if allowed to do so.

873. Viscount *Canning.*] In making those rules, were you obliged to reduce in any degree the amount of necessaries which the troops carried?

No; I kept everything pretty nearly as it was in that respect; but I organized it. I could not reduce the necessaries of the English troops, because they were fixed; they were allowed, however, to carry much too large a quantity, in my opinion. The Sepoy carries all sorts of pots and pans, and I destroyed those; I did not allow that; I restricted him to what his officer said was necessary.

874. Viscount *Gough.*] Is not there a Baggage-master in all armies, whose duty it is to regulate it, as far as one man can regulate it?

There is; but with such an immense quantity of baggage as I spoke of just now, one Baggage-master can do nothing; he is exhausted; it requires to have for the purpose an establishment of officers and non-commissioned officers who have nothing else to do but to enforce certain baggage regulations.

875. Earl of *Ellenborough.*] According to the present system, are not a very large number of fighting men necessarily taken away for the purpose of looking after the baggage?

A very large portion.

876. Not in bodies, but singly?

Singly, and in small detachments; they are obliged to spread along the line of march, which is long and straggling.

877. Viscount *Gough.*] But that is only in moving from quarters to quarters; not in the field?

In marching, and in the field, when not close to the enemy, they spread along the flanks whenever they can, in order to pillage villages, if possible.

878. *Chairman.*] With respect to the Commissariat arm in the field, what is your opinion of its present state?

With regard to the Commissariat, I think it is on a bad plan. In Bengal it is chiefly regulated by the "Military Board"; the "Military Board" orders (speaking generally in outline) everything to be furnished by tenders, and the lowest sealed tender is taken. Now the Indian contractor will offer far below what he can afford to furnish the articles at, for the sake of being employed by the Government, which gives him an opportunity of cheating and oppressing the people. He therefore takes a contract that he is unable to execute properly, and he furnishes bad bread, bad meat, bad wine, bad milk, bad everything, because it is impossible to furnish good for the price at which he has undertaken to do it. I have heard from many commissaries that the contractors could not execute their contracts at the prices they contract for; and as to the articles themselves, I speak from my own personal knowledge, for I never passed an European regiment without examining into it. I speak only of European regiments; the others differ; they feed themselves, and I always found bad supplies, almost without exception.

879. Earl of *Ellenborough.*] Would you suggest any alteration in the superintendence of the Commissariat, which is now confined to military officers?

I am not sufficiently master of the subject to say that it can be better done, but I think it ought to be under a Commissary-general, and not under a Military Board;

Lieut.-Gen. Sir C. Napier, G.C.

2d Dec. 1852.

Board; and that severe rules, but not very many, and severe punishments, should be established for defalcation. Officers have said to me, "We have assembled in boards to condemn bread and meat, and brandy and wine, for the regiment and for the hospitals, over and over again; and the moment it is condemned, we have heard no more about it, and the same thing has gone on as bad as ever; we are tired with useless condemnations of provisions." The privates also grew tired of complaining, and are discontented. of course. The Military Boards are a curse on the Indian army; at least the Bengal Military Board is.

880. Lord *Elphinstone*.] But the contractors are obliged to give security?

They are, but it is not enforced; they do not make the security sufficiently ruinous when there is a defalcation; it is worth their while to run the risk, and even pay the forfeit, which they make up after by bad articles when the storm blows over. Every Surgeon in European regiments in India will bear out what I have said, and almost every Commanding Officer. The Commissaries have always told me that their hands were tied; the Military Board would not allow them to take the necessary measures, and make an investigation to go up to Calcutta, showing that the contractor could not act honestly for the prices in his tender; there were delays in all inquiries, and, in short, the remedy never came; the evil continued. The surgeons have told me frequently, that the tea, brandy, milk, sugar, and such sorts of comforts furnished to the hospitals, were such that they would not give them to the sick; it would make them worse than the disease did. These are things of vast importance to the sick soldiers, yet the punishment of such atrocities was merely a few rupees, when fines and imprisonment with hard labour in chains ought to be the result of such villany, by which both the Government and the soldier are defrauded, the first of money, the last of money and life. All these evils to the British soldier spring from the Military Board; the public allows amply for the soldier, but he is cheated by under-strappers. Severe punishments can alone remedy these evils.

881. Earl of *Ellenborough*.] A reference being necessary to the Military Board in Calcutta from the army in the field, the answer would not arrive till the campaign is over?

Yes; and it also happens in quarters in time of peace. These delays in doing the soldier justice, do incalculable mischief to his health and morals too; for he grows disgusted with bad provisions, and in his anger and suffering he flies to ardent spirits for comfort; the result, or rather one result, is, that he soon becomes unfit for service, and an expense to the public. In England, if the meat or bread is bad we reject it, and buy good meat and bread at the butcher's or baker's; now that cannot be done in India; therefore you must give a good price to the contractor, and let him make a little money by it fairly, and force him under very heavy penalties of confiscation and imprisonment as a felon, to furnish good provisions. I know no other way of correcting the evil, except by corporal punishment.

882. Did you find any deficiency in the number of medical officers in the army?

Yes, there is always a deficiency of medical officers; a great many are sick; many are employed in civil situations, and therefore in general after an action there is a great want. When I was in Scinde, from 1842 to 1847, I could not get many medical officers of higher ranks than assistant-surgeons (except surgeons of the Queen's regiments) to remain; the medical men of the higher grades in the Company's service always contrived to get away. While the Bombay Government was crying out against the unhealthiness of Scinde, it left the sick in the hands of young assistant-surgeons more than I thought was right. However, your Lordships can judge if you will order a return stating the number, rank, names, and length of service of every medical officer in Scinde from 1842 to 1847 inclusive; stating also how long each remained in Scinde, whether he held any appointment in the Presidency, and if he returned to one there. This return should also state the number of sick in Scinde in each year and each month. Your Lordships will then have pretty strong proof how much we wanted medical men of experience. A similar return of the medical men in the Presidency would show whether the want of medical men in Scinde arose from a faulty arrangement, or from a scarcity of medical officers.

Lieut.-Gen. Sir C. Napier, G.C.B.

2d Dec. 1852.

883. Are not the medical officers of the army called in from their civil appointments in the event of the army going into the field?

I believe they are; whenever I have commanded an army in the field in India, the thing has been arranged before; but I believe those that are civilly employed are called in immediately; and there the difficulty arising from their having been for a long time absent from their regiment, is not so important as it is in the case of the officers, because the medical man has probably been practising in his profession.

884. But if the medical man had no practice but that in the families of civilians whom he has been attending for some years, will he be quite up to taking charge of a regiment?

No, he will not be so competent, I suppose, as he would otherwise be; indeed, I am sure of it; I think that no Military Surgeon should be allowed to take private practice; it opens the door to great abuse.

885. How far do the Native assistants of the medical officers appear to be competent?

I have heard, in a great number of instances, that they were very competent indeed. I have heard that they are averse to dissection in Bengal, but they do it well nevertheless; I have more than once been told by able surgeons that their Native assistants could prescribe for a patient as well as themselves; there is no reason why they should not.

886. Have you known cases of Europeans going to Native medical officers rather than to Europeans?

I have heard of it; and I know that formerly, in particular cases, our soldiers in England have been known to go in preference to a practitioner in the town.

887. *Chairman.*] Do you consider the present system of employing military officers as commissaries better than employing civilians, or would you make any change in that respect?

I could not pretend to pronounce an opinion upon that. I think it would be so far better to have civilians, that the military men would then be doing duty with their regiments; but they can do commissariat duty very well if they like. The civilians would, I suppose, when they got into work, do it equally well; but a great deal of fraud goes on in that department in India, that I know.

888. It has been stated by one of the witnesses, that the Natives look up with more respect to military men in those situations than they would to civilians?

That may be the case, but I cannot pretend to say that it is so; the Natives of India are all half military, and they look with more respect to a man who has a sword by his side than to one who has not; they are so very military themselves.

889. You stated that there was a great deal of fraud perpetrated in these contracts; do you mean on the part of the Natives, or on the part of the English?

On the part of the English; it is universally known, not by any positive proof, because if it were they would be broken, but it is very well known that men have been over head and ears in debt, and have gone into the Commissariat, and in a short time they have been living in great affluence, and their debts paid; that could not come out of very small pay. Such things are not easy to prove, but I believe the public opinion to be correct on these matters. Where an officer of high honour is in the Commissariat Department, all goes right; when an officer in that department takes presents from contractors, the public have a right to believe that officer to be dishonest; I do so. When I see a commissariat officer take part with a contractor, I believe the former to have been bribed by the latter, either directly or indirectly; a commissariat officer who takes the smallest present from a contractor, I think, ought to be deprived of his commission.

890. Lord *Elphinstone.*] Are you speaking of European officers?

Yes.

891. Then the superintendence of the Military Board is not very effective?

No, I do not think it is; I think it is mischievous in everything.

892. All

Lieut.-Gen. Sir C. Napier, G.C.B.

2d Dec. 1852.

892. All those vouchers, and all those papers which they are obliged to send in are so much waste paper?

I suspect so, except vouchers for payments made. Among many evils in the Commissariat Department and the Military Board, one of the greatest is the length of time which elapses before accounts are closed; an officer, whom I believe to be of high honour, who was under my command in the Hill war in 1845, had not been able to get his accounts closed for that campaign in 1851. This system of the Military Board is enough to make men dishonest; it presses especially hard on the officer of Engineers, of which there is a lamentable deficiency.

893. Viscount *Canning*.] What change of system would you suggest as check upon that?

That is a very wide question; I do not know that I can answer it; but there was a very systematic examination into it by a person who is now in London, and if your Lordships choose to examine him, he can tell you a good deal about it; and that is Major Kennedy, who was sent by Lord Dalhousie to Calcutta about the railways, and he was ordered also to examine into the conduct of the Military Board; and he did go thoroughly into it with an extraordinarily powerful mind, and he exposed the whole thing, I believe, for Lord Dalhousie. He is now in London, and if your Lordships choose to see him, I am sure he can give a great deal of information about it, much more than I can, or anybody else.

894. *Chairman*.] Did Major Kennedy make any official report to Lord Dalhousie upon this subject?

Yes; the commission of which he was President sat at Calcutta for a very short time; but he told me that he never saw anything like the confused way in which things were going on.

895. Was that report made public in India?

No; the Court of Directors, I suppose, have it.

896. Viscount *Gough*.] Is not Major Kennedy an experienced and very meritorious officer?

He is an extraordinarily good officer.

897. *Chairman*.] Was he an officer of the Queen's service?

He was in the Royal Engineers. There is one class of men that are very much taken from the military, and I am sure they would do a great deal more good with their regiments; I mean the Political Agents; they are gentlemen who are taken from their own military work before they know how to command a company, and are sent with great power, in fact, to command general officers, and I am convinced that they do a great deal of mischief. They shake the military commanders' confidence in their own proceedings; I saw two or three instances of it myself when I was in India.

898. Viscount *Gough*.] A Political Agent in the field is not under the orders of the officer commanding the force?

No.

899. Lord *Ephinstone*.] Should you prefer having civilians as Political Agents?

I do not see why a political civilian should not be as good as a military man, but he ought to be restrained to such powers as he is competent to make use of, and not to paralyse the power of the military commanders, who are responsible for their deeds. I know that the other day an officer of very high rank in India resigned, because he was dictated to by a Captain in the field; he refused to obey him, and I believe that he was reprimanded as insubordinate; at all events he resigned.

900. *Chairman*.] Are the Committee to understand that the officer commanding the troops in action is considered to be obliged to attend to the directions of the Political Agent?

I do not know that I am warranted in saying that he should obey them, because I did not myself; in the Kohat Pass the Political Agent, who is an excellent officer and a great friend of mine, began by advising me; but I put an end to it on the spot, without stop or stay. If he had not had the good sense to desist, I should have ordered a corporal and three men to take him to the rear; that has

Lieut.-Gen. Sir C. Napier, G.C.B.

2d Dec. 1852.

has not been done by anybody, but I would have done it in India had any Political Agent interfered with my command. I know that in some instances the Political Agent has attempted to dictate under fire to the Commander of the troops.

901. Viscount *Gough.*] But in fact they have no command whatever over the troops; they are merely there as Political Assistants to the Commander-in-Chief?

But take the very instance of the force in Kohat; the Political Officer burned villages under the protection of the troops in spite of my wish; the Board of Administration gave orders that those villages were to be burned, and I legally could not stop it.

902. Lord *Elphinstone.*] But you were understood to say just now that you did stop his interference?

When he attempted to dictate what I was to do, I stopped that; I made my own movements and my own dispositions; but when he told me his orders that the villages were to be burned, those orders were from the civil power, and I was obliged to permit it.

903. Were those orders from the Governor-general?

I believe they were from the Government of the Punjaub.

904. Earl of *Ellenborough.*] Who burned the villages; not your troops?

No, the political troops, Natives that he had under his command.

905. Then at the time that the troops under your command were protecting the villages, these political troops, under the Political Officer, burned them?

We did not exactly protect them, because they had been abandoned; they were mere walls of houses which were defended, and we attacked those in them; but had they been occupied by the families of the defenders, I would not have allowed any orders to destroy them to have been executed, unless direct from the Governor-general to myself personally, and in that case I should have instantly resigned my command. To sum up my answer, I had no legal authority to interfere with the civil force; but had the villages been inhabited, I should not have suffered the civil force to burn them; as the villages were empty, I allowed the civil force to obey its orders, because I well knew that if the war continued on that frontier, that war would be attributed to my conduct in not allowing the villages to be burned.

906. You had no embarrassment from a Political Officer in Scinde?

None at all; Lord Ellenborough put an end to that; if I had I should have lost the army.

907. Viscount *Canning.*] Were those orders for the burning of the villages made known to you for the first time when they were put in execution?

Yes; it was in the midst of the attack. I was attacking a village, and I found it getting all in flames; I saw a fellow putting fire to it; we were fighting at the time. I ordered them to stop this burning, but it was too late; the whole village had been set on fire. Colonel Lawrence came up to me with Colonel Grant, and said, "I have an order to do this." I got very angry. I ordered this to be stopped; but he came to me afterwards, as far as my recollection goes, and told me, "Here are my orders; what am I to do?" I said, "Very well, obey them; there is nothing else to be done."

908. Those orders had not been communicated to you by Colonel Lawrence previously?

No, he had not communicated them to me previously; indeed, there was very little time for anything to be communicated, for I had just arrived, and we were obliged to march immediately; but there was an instance which I think it right to state to your Lordships, because it shows the danger of these things. The Board of Administration sent orders to Peshawur to reinforce the garrison of Kohat by two Sikh regiments, an Irregular regiment of Infantry and an Irregular regiment of Cavalry. At the same time that this order arrived, I arrived also at Peshawur. At that moment there had been a breaking out of the Affreedees; they had murdered 15 or 20 of our men in a tent, where they had been put by orders of Government, to mend the road through the Affreedee territory, and which the Affreedees denied our right to do. It was necessary to reinforce Kohat, because upon this murder the whole of the people were up; I thought it was a very awkward thing for those two regiments to go through those people's

pass,

Lieut.-Gen. Sir C. Napier, G.C.B.

2d Dec. 1852.

pass, and though I had no right to interfere, because they were not under my command, I told the officers that I would review these regiments; I did so, and I found them both in admirable order, but the Infantry regiment had no arms fit for use. One man had the stock of a musket on his shoulder; another fellow had a barrel; one of the locks at full cock could not be let down; another had not a bayonet; they were old, worn-out, unserviceable arms that had been given to them. These regiments were ordered to march to the town of Kohat with the whole of the Affreedees in a state of rebellion. I saw that it was impossible; that they would be cut to pieces; and I stopped their march till I prepared a regular force of 3,000 men, with a good many pieces of Artillery. Then I undertook to convoy them to Kohat, where they had orders to go, and I went through the pass, fighting the whole way day and night, with 3,000 men, and a large body of Artillery. But if those two regiments had attempted to go through in the state they were then in, as they were ordered to do, they would have been cut to pieces. The accident of my arriving there at that moment saved a great disaster.

909. Was that in any way consequent upon authority being vested in the hands of a Political Agent, and misused?

It was in consequence of the Civil Government sending their orders to the Irregular troops which were raised, and not put under the Commander-in-Chief, but under the orders of the Board of Administration, which sent to Peshawur the orders for this to be done.

910. Viscount *Gough.*] The whole Administration resided at Lahore, and the authorities there sent their orders to have operations performed without at all knowing the state of the country?

Exactly; the Board gave me several proofs of its utter ignorance of all military matters.

911. Lord *Wharncliffe.*] Would that order have been sent out without any authority from the Governor-general?

Yes, the Governor-general at that time was far away; then there was another instance that is striking. At Dargeeling, (I speak from recollection,) there was a force assembled to punish the Rajah of Sikhim, who had arrested an English gentleman. They were to assemble a force to punish him; it was assembled without my knowledge, except that I heard that a good many troops were ordered there; I waited to see what the result would be. General Young was ordered to take the command, and when he arrived at Dargeeling, a Mr. Lushington, the civil agent, put into his hands the orders of the Government, with his plan of campaign. He was to enter the Sikhim country by seven different routes, with his force (and as many detachments, of course), and this by by-paths in single file. The General was surprised at this, and he remonstrated against it; he wrote his reasons, showing that he might get in, but that he could never get out, and that he never could get through this country; he represented this strongly; this representation went to Calcutta. The Supreme Council (for Lord Dalhousie had, I think, at that time embarked) found his reasoning so perfectly conclusive, that they stopped the whole thing, and ordered the troops back, but wrote him a reprimand for his remonstrance, though it had convinced them of the danger of doing what they had ordered. He was very much hurt, and wrote to me, and I wrote to say, that I had studied the thing, and that I found his objections all perfectly just; that I quite agreed with him that if the troops had gone into that country they would have been cut to pieces.

912. Lord *Elphinstone.*] In that country there are no other roads but those mountain paths?

There are no others, I believe.

913. Viscount *Canning.*] But in that case the responsibility of those instructions issued to General Young rested not so much with a Political Agent as with some higher authority?

The Supreme Council gave the orders.

914. Then that is rather an instance of injudicious interference on the part of the Supreme Government with the Military Executive, than of undue interference on the part of a Political Agent?

Lieut.-Gen. Sir C. Napier, G.C.B.

2d Dec. 1852.

Yes, he was ordered to do it; but it shows the danger of these things, for if this General Officer had gone, he certainly would have been destroyed.

915. Lord *Elphinstone.*] Was Sir John Littler then President of the Council?
He was; I am quite sure it was not of Sir John Littler's own origination, but it came under him; he sanctioned it, which he ought not to have done.

916. Earl of *Ellenborough.*] Was not the fact probably this, that the Supreme Government gave the order upon the representation of the Political Officer who was upon the spot, without leaving anything to the discretion of the Commander of the Forces, or consulting him at all upon the subject?
Yes, I believe that to be the real story.

917. *Chairman.*] Have you any remarks to make upon the subject of disciplining or stationing the army in its quarters?
I think there might be a better arrangement, so that the troops might be more in masses. I think a much smaller army would be necessary in India in that case; I think it is now so completely dispersed that really its numbers have no efficiency.

918. Earl of *Ellenborough.*] Do you not think that by substituting a military police for the civil police which is now placed under civilians, many of the troops now dispersed over the country might be placed in those masses?
I am perfectly convinced of it; if those police battalions which Lord Ellenborough established had been preserved, and the system extended, I believe the army would have had a great addition to its efficiency, and it would be rendered then perfectly efficient, with the power to reduce at least 50,000 men; it is now wasted in doing civil duties.

919. Is not the civil police now utterly inefficient for the purpose of preserving the peace if it is disturbed?
Perfectly, I believe; and more than that, from what I have heard, it is oppressive to the people.

920. Viscount *Gough.*] Is not the Native army very severely worked with the different duties they have to perform, in escorting treasure and everything that moves through the country, so that, in short, the army is a moving army?
I can only tell your Lordships that in the latter part of 1849 and in 1850, including a space altogether of about 15 months, I gave upwards of 30,000 Cavalry and Infantry for mere guarding of treasure in the most unhealthy part of each year; that gives a pretty good example of the civil duties which the army has to perform; an immense army employed wholly in that duty, and of course disorganized by it, because the European officer could not march with his men; he is obliged to save himself by not marching in the sun; it was in the hot part of each year; the Native troops are very hardly worked, and they lose all discipline; some of them are three or four months upon the march.

921. Is not it the fact, that from the constant harassing and performance of escort duties, the army had not, generally speaking, above two nights in bed?
I should think about that; I tried to get a little more for them, but with a great deal of trouble; in many cases there are permanent guards, not relieved for months; these men have duty every night. This destroys the discipline of the Bengal army; these permanent guards are not allowed in Bombay.

Consequently, the discipline must be relaxed?
It must be relaxed, ruined.

923. Earl of *Ellenborough.*] What was the strength of your military police in Scinde?
Two thousand four hundred in my time.

924. Had you any civil police?
No, none.

925. And you maintained the tranquillity of the country perfectly with that body of men?
Perfectly; there never was a robbery committed undetected that I recollect, a single thing went wrong; the police were perfectly equal to their work. vided them into three classes; there was the mounted police, the rural police, he city police; there was some difference in their arms, and that was all.

926. Can

Lieut.-Gen. S
C. Napier, G.C

2d Dec. 185

926. Can you at all compare the expense of that military police with the expense of the civil police employed for the same purposes?

If I had had time, I could have stated it pretty nearly. I think that, comparing the civil police in the Bombay Presidency, which was very bad compared with the police in Scinde, the result was, that the one was about 25 per cent., and the other about 15 per cent.; but I cannot speak with certainty. The Bombay police is now commanded by an officer who began under me in the Scinde police, and I believe he has much improved the Bombay police.

927. And the number of the civil police was very much greater?

Very much greater. I am afraid I gave offence to Lord Dalhousie by that very circumstance in the Punjaub. I begged him to have a civil police, for the purpose of sparing the soldiers. We had 54,000 Infantry, which Lord Gough had placed in situations perfectly to command the country, and there were 18,000 Irregulars in addition; and those 72,000 men could keep the country in perfect order, no doubt; but it was a force that India could not afford for many years for one province; and I said to Lord Dalhousie, "I can reduce this force if you establish an efficient police; but it is a newly-conquered country, and unless there is an efficient police, I do not think I can safely reduce a man; and I beg leave not to reduce the force at all, unless that were done;" to which he agreed.

928. If there were an efficient military police throughout the Upper Provinces, for instance, when the troops were wanted suddenly for operations in the field, could not the military police be called into the cantonments, and take temporary charge of them?

I thought so; I am sure of it There might be a strong force formed by employing a very small portion of those now employed in attending private families as peons and chuprassies, and all those sort of people. I think Lord Ellenborough told me, before I went out to India, that those people were almost as numerous as the army. I took great pains to inquire how the fact was, and I found them more numerous than the army.

929. Lord *Elphinstone.*] Do not they get very small pay; only three rupees a month?

But there is robbery, which is very considerable, besides; every fellow with a belt lays everybody in the country under contribution in some way or another.

930. Is it not the fact, that, to a very large extent, the children in the schools that are maintained are the children of those chuprassies and officers about the cutcherries?

I should say so, from things that I have heard; in fact, they are private servants, and get favour from their masters in every possible way.

931. Viscount *Gough.*] In your opinion, is there a sufficient European force in India?

Yes, I think there is. When I left it, there were about 30,000 men of the Queen's troops.

932. How many regiments are there in the whole range of country from Calcutta up to Umballah?

I could not say exactly; but there are a great number; I suppose there are three or four. There were two at Meerut when I came away.

933. Lord *Elphinstone.*] And at Cawnpore and Dinapore?

Yes, there are several along that line.

934. Viscount *Gough.*] Is not the greater portion of the army in the Punjaub?

Yes.

935. *Chairman.*] Is there any other point which you wish to mention to the Committee?

Yes, there are two which I would mention: the one is the extreme want of good barracks, with high rooms. The quantity of air that I found allowed, generally speaking, in each barrack, to every person who slept in it, was about 450 to 600 cubic feet. Now, they allow to a prisoner in England 1,000 cubic feet, in this climate, and with plenty of ventilation. In India, they are generally without any good ventilation, and the average is from 450 to 600.

936. Is

Lieut.-Gen. Sir C. Napier, G.C.B.

2d Dec. 1852.

936. Is that from the rooms being too low?
Yes.

937. Lord *Elphinstone.*] Are those barracks upon the plan which Lord William Bentinck introduced?
I do not know; I saw none good but some which Lord Ellenborough built at Allahabad, and they were very good; the only evil there, was, that they were in too confined a fortress; the air was too hot for Europeans, and fever resulted.

938. Earl of *Ellenborough.*] The barracks at Allahabad were the officers' quarters converted into a barracks?
Yes.

939. Are they too low at Umballah?
They are better at Umballah than at other places, but I think they are too low. I wanted to establish a system that for every man that the room held there should be 1,000 cubic feet of air allowed; the way in which this was to be done was by giving height, because if height is not given the area of the floor alone is no criterion; for the Military Board cram the floor with so many people that the size of the floor only does mischief; it allows of more men being placed in a room, than that room ought to contain. The plan which I gave to Lord Dalhousie, and which has been acted upon to a certain extent, is a narrow barrack with great height, so that it is impossible to put into it more people than can have sufficient breathing, and that sufficient breathing should, at the lowest calculation, be 1,000 cubic feet per man, woman and child, who sleep in it.

940. The barracks you built in Scinde were 25 feet high?
Yes; the other day I heard that they are found to be very healthy; one wing only was built, the other was stopped; the materials were collected for the whole, but they are lying scattered about and wasting.

941. Lord *Elphinstone.*] In the pattern barracks which Lord William Bentinck ordered to be introduced, was there not provision for a certain height and a certain surface, and verandahs all round the building, and for giving to each company a separate barrack?
I do not know what Lord William's plan was.

942. Earl of *Ellenborough.*] Those at Umballah are detached buildings?
Yes; but the great evil is having a great surface of floor; because then you can put three or four rows of beds; then the air is consumed, and the foul air cannot rise. Where the barrack is high, the foul air does ascend, and goes straight through to the top of the building, and you get rid of that foul air by holes in the roof, while fresh air comes in at the sides to supply its place.

943. Did it occur to you that besides increasing the height of the barracks and otherwise improving them, anything else could be done for the purpose of diminishing the sickness and mortality amongst the European troops; for instance, as to the tightness of the dress?
Yes, I think that that should be attended to, but the great thing is to diminish the quantity of guards and civil duties which they have to perform; it destroys their health and discipline very much; but good barracks is the most important of all things for health.

944. Lord *Elphinstone.*] Does not that apply more to the Native troops than to the Europeans?
The Europeans have a great deal of duty to do; but the barracks are the most important thing, because the man goes to bed in a place where there is malaria; the windows are left open; there are so many in the room that they cannot breathe unless they leave the doors and windows open; they thus lie gasping in the malaria, and the man is so hot from the number of people and the hot air, that he cannot bear it; he therefore gets up and goes outside, sleeping in the middle of the malaria; then he wakes with a fever, or is so exhausted that he is miserable; and he goes to the canteen, takes his dram, and he comes home, feeling cheered up for the moment; but he goes to bed next night feverish and heated; the dram has done its business; it is repeated the next day, and he is very soon in the hospital. All this and much more is entirely owing to the defective state of the barracks.

945. Earl of *Ellenborough.*] Did it occur to you that any material improvement could be made in the construction or management of the hospital?

No, only by giving them height, and baths always; so ought every barracks to have, and this they now do.

946. Lord *Elphinstone.*] Do they give them punkahs in the hospitals?

Latterly the East India Company have ordered a small allowance for punkahs in all barrack-rooms, but it is not enough. I took the greatest pains to ascertain the effect of those punkahs; I found that they at once turned the scale in favour of health; they are very useful indeed.

947. Earl of *Ellenborough.*] Did you see the improvements made in the hospital at Allahabad?

Yes, I did, and they are very good; the only objection to the hospital at Allahabad, is the excessive heat and bad air of the site at the junction of two rivers; but the punkahs certainly did a great deal of good.

948. Lord *Elphinstone.*] Has not the use of ice in the hospitals also been very beneficial?

I believe it has, but the great thing is fresh air; that is the real foundation of everything regarding health; where there is great height you can shut the windows and doors, and the man can sleep in the cool air inside; where there is not height he is suffocated, and sleeps out of doors.

949. *Chairman.*] Is there any further point that you wish to mention?

The other point to which I referred was one that I think very important; the employment of the Goorkah race; they are excellent soldiers, as Lord Gough can testify much better than I can, for he has seen them engaged and I have not; but everybody says that their courage is equal to that of our own men; they have no caste, so that there is no difficulty as to their food; they mess and do everything without causing any difficulty, and they are excessively attached to the European troops; they feel the greatest possible pride in the British uniform. When I turned a Goorkah regiment into the 66th, their delight at wearing a red coat was great; they are very fine soldiers; if we had 30,000 of them in addition to 30,000 of our own Europeans, we should have a force in India that could do what it liked; we should no longer hold India by opinion, but by actual force.

950. Lord *Elphinstone.*] But the Sikhs also have no caste?

No, the Sikhs are all of one religion.

951. Is not there an immense advantage in raising Sikh regiments?

Yes; but you do not know that the Sikhs are true. In India we must take broad views; while we are victorious all goes smooth, but if we had a reverse, what would the Sikh regiments do? After Cabul they were quite ready to attack us; Lord Ellenborough's force at Ferozpore, and the still existing policy of Runjeet Sing, hardly kept the Sikhs in check; they have fought us twice since, and both times run us hard; they may be faithful, but they are not fond of our rule. I formed two beautiful regiments of Beloochees, but I did not altogether confide in them till several years had proved Scinde faithful and contented with our rule. The Sikhs are a nation, and have one religion; we have upset their nationality; they have something to look back to; whereas the Beloochees are merely warlike tribes; they lost nothing. However, I dare say the Sikh regiments may turn out faithful.

952. Have not two regiments of them volunteered to go to Burmah?

Yes; they will volunteer to go anywhere; the Sikhs may be very good soldiers, but the Goorkahs are as good, and are devoted to us.

953. You would raise a regiment entirely of Goorkahs, and not intermix them with Hindoos?

I would not intermix them; we should not do that; I would preserve their nationality by keeping them in regiments; besides, they are such ugly little fellows that they would spoil the appearance of a tall Sepoy regiment. It is a very curious circumstance that when I turned over this little Goorkah regiment to be made the 66th, I said to the Colonel, "You will require all the tailors you can get to cut down the coats," and he was in despair about it; but when they began to try them, they found that they had nothing to do but to cut them short; they were tight in the shoulders, chest and arms, and every way, except in length; their expansion of chest is enormous; I believe it is accounted for by the

Lieut.-Gen. Sir C. Napier, G.C.B.

2d Dec. 1852

the circumstance that Hill men are always larger-chested than others, to give room for larger lungs, the latter expanding from the constant habit of going up steep hills and living in rarefied air.

954. Viscount *Gough.*] Do not you think it rather unfortunate that our Goorkah regiments, including the one that is now transferred to the line, were paid only at the rate of five rupees a month?

Yes, so much so that I got their pay increased.

955. Was not that confined to that regiment?

I begged it for the others too, and I have Lord Dalhousie's promise to give it them, dated about November 1849. Those people were absolutely starving in the Hills, yet they said they would not desert while they could live; when I obtained a promise of an increase of pay for them, I heard that their yell of joy was something extraordinary; if they have not got the increase of pay, the public faith has been broken with them; I do hope this is not the case.

956. Lord *Elphinstone.*] Do you think they are as good in the plains as the inhabitants of the plains?

Perhaps not, but they are as efficient as Europeans are in the plains.

957. *Chairman.*] With respect to the present system of furlough to military officers, do you consider that a good system, or do you think that any improvement can be made in it?

The furlough question has become in India a sort of cry; there are very few against the new modification of the furlough system; I mean that which the Indian officers claim. For my part, I should say that the more you enlighten the officers' minds by letting them come to England, the more likely they are to do their duty well; but I confess I never much considered it, for I saw that it cannot be long refused. The Overland journey has made the old system inconsistent, if not absurd. The Court of Directors must go with the "spirit of the age."

958. Viscount *Gough.*] Do you not consider it impolitic to allow officers advantages in going to the Cape and going to New South Wales, where it is difficult to get them if an emergency arises, and to debar them from those advantages, on coming to England, where their minds would be enlarged, and from whence they can return to India in a short time if their services are wanted?

Yes, I think it is very inconsistent and impolitic, by as much as it produces discontent among the whole body of the Company's officers.

959. Lord *Wharncliffe.*] Have you any knowledge of the Sikh regiments raised in the Punjaub?

I believe they are very good.

960. You have no personal knowledge of them?

I have a knowledge of the Second Punjaub Infantry, which was raised of various people, Sikhs, Pataus, and all kinds of men. I must say that I never saw a finer set of soldiers out of fire or in fire; I used them in going through the Kohat Pass very freely, because I wanted to save our own men, and I made those fellows do almost everything. I never saw men fight with more determination; I armed them; this was the regiment I referred to which was not well armed. I took all the detonating arms that the Sepoy regiments at Peshawur had in store above the number that they used, and I gave those firelocks to the Second Punjaub regiment; in two days they used them perfectly, and the third day we marched and fought. Major Coke commanded them; an excellent officer; one of the best I know of his rank, and worthy to lead this noble regiment, which he had formed; they were as well drilled as any regiment of Guards in London; I never saw finer soldiers, such perfect masters of their weapons, and so thoroughly drilled; their drilling was Major Coke's doing, but their perfect coolness in action was their own. I believe all the Sikh regiments will be the same; but very few will be commanded by such officers as Major Coke.

961. And they are perfectly well affected to the European officers?

I believe they are; if any misfortune fell upon us, I do not know what the result of it might be, but with such men, if they are well affected, I would not care for a European support.

Lord *Elphinstone.*] Do you think the system of having pure Sikh [illegible]ts, like those which Lord Hardinge raised, is preferable to having mixed regiments

Lieut.-Gen. Sir C. Napier, G.C.B.

2d Dec. 1852.

regiments of Mussulmen and Sikhs and all castes of people in the Punjaub; which system do you think the best?

I confess in those countries where all your troops are mercenaries or hired troops, I think it is better generally to mix them, because you know what goes on better; but they are all very fine soldiers.

963. In fact, that system approaches nearer to the system of the rest of the Sepoy army?

Yes; the real excellence of troops depends entirely upon the commander, upon the spirit that is put into them by him. It does not signify of what country the soldier is, provided he is well drilled, and that his leader has put the right spirit of self-confidence into him; aye, and he must have confidence in his commander too. There is no rule for this; it depends on the character and abilities of that commander. I should like to observe, that I have often thought great advantage would arise to the East India Company's army, if every Cadet, before he goes to India, was made to do duty with a Queen's regiment in England for one or two years; this would go far to assimilate not only the discipline, but also the tone of the two armies, and also give more time for the youthful constitution to consolidate, before it be submitted to the enervating influence of an Indian sun. I am sure that this is very important to their future health. These young men would also acquire steady habits, and enter military life amidst their friends and in their own country; thus reaching India as matured soldiers, instead of joining as recruits, amidst all sorts of temptations, by which a vast number are ruined in the first few months after their arrival. I can perceive no great difficulty in carrying my proposal into execution, and the advantage both to the public service and to private interests would, in my opinion, be very great.

The Witness is directed to withdraw.

COLONEL ROBERT ALEXANDER, is called in, and examined, as follows:

Colonel Robert Alexander.

964. Marquess of *Tweeddale.*] YOU are an officer in the East India Company's service?

I am.

965. How many years have you been in the service?

Thirty-three.

966. What situations have you held?

I have served as regimental staff, and in most departments of the army; I have been in the Quartermaster-general's Department; I have commanded a regiment, and been Judge Advocate-general of the army; I have been Adjutant-general of the army; and I have occasionally officiated for short periods, when my services have been required, in other departments of the service.

967. *Chairman.*] What was the last appointment you held?

Adjutant-general of the Madras Army.

968. Marquess of *Tweeddale.*] What are the rules for selecting officers for the staff?

For the regimental staff, an officer must have served two years with his regiment; he must then, before he can be appointed, have passed an examination as an interpreter for the situation of Quartermaster and Interpreter, and an easier examination in the languages for an Adjutant. An officer must have served four years with his regiment before he is qualified for the general staff, and then he must have passed an examination in the languages according to an established standard, in order to qualify him for that duty; no one can now be appointed to the Commissariat without having passed an interpreter's examination. For the Quartermaster-general's Department, an officer must undergo an examination in military surveying and drawing; those are the general rules of the service, except in the case of Aides-de-camp, for the selection of whom some facilities are afforded to general officers.

969. What is the standard of qualification for staff employment?

The qualifications for the staff are defined in the general orders: an officer must pass an examination in Hindostanee, or one of the languages; that for an Interpreter is at a high standard, as questions of life, death, character and property

Colonel Robert Alexander.

2d Dec. 1852.

depend upon his interpretation before a Court-martial or Court of Requests. The qualifications for the general staff and Adjutants of regiments, are generally that the officers should have sufficient acquaintance with the native language to be able to read and answer communications which they receive, to converse freely, and to communicate orders verbally and in writing in Hindostanee.

970. When an officer goes on the staff, what is it that will put him off the staff again?

Promotion in most instances, and always a return to England, or going west of the Cape of Good Hope: there are but few appointments which must not be vacated on promotion to a regimental majority.

971. When you say "promotion," that is to say an officer may be put on the staff after four years' service, and may remain on the staff till he is Major?

An officer may go on the staff after four years' service, and may remain till he is Major.

972. When he becomes a Major, if he is one of the senior Majors of the army, he will command a regiment?

Immediately on promotion he has to vacate his staff appointment; he is necessarily then the junior Major of the army; but he may command his regiment.

973. What is the effect of employing officers on civil duty?

In political employments I think the effect is good, as holding out a very high object to stimulate the qualifications and exertions of the officers: there are situations on the civil staff of the army that, I think, it would be much better for the public service if they were filled as they are in Her Majesty's service, by having a civil department; I would say the Commissariat, for example.

974. *Chairman.*] You would prefer civilians in the Commissariat to military officers?

I should prefer a separate department entirely, as in Her Majesty's service.

975. Marquess of *Tweeddale.*] What advantage would it be to have civilians, instead of military men, in the Commissariat?

I think, if a young military officer gets into the Civil Commissariat Department, and remains there till he is a Field Officer, he loses great opportunities of acquiring his military professional knowledge and tone, and that feeling which I think it is so essential for all men in military life to possess The *esprit de corps* is naturally turned to the departmental duties which an officer has honourably discharged during all the best years of his life.

976. What opportunities have officers of acquiring scientific and general knowledge in India?

None such as they have in this country; they are dependent entirely upon their own exertions and their habits of study; they have abundant leisure; but I am not aware that otherwise they have any opportunities, except of acquiring a knowledge of the tactics of their own profession, preparatory for active service in the field. I believe that in every, or almost every regiment now, the officers maintain libraries, and that at most of the large stations there are public libraries supported by subscriptions, and furnished with books, according to the literary or scientific tastes of the officers there: instruments for scientific purposes will be found in the possession of individuals who enlarge their minds, and can afford to buy them.

977. Lord *Elphinstone.*] There was a publication commenced at Madras by the Engineers; can you state whether that has been kept up?

It is upon the plan of the Engineers' professional papers in this country; there is also a very valuable little publication kept up in the Madras Artillery, which receives and publishes the suggestions of any writer, from the officer to the private soldier, calculated to improve the practical knowledge of both officers and men.

978. Marquess of *Tweeddale.*] Is there not a record kept of all public works that are carried out under the Engineers?

In the Chief Engineer's office there is.

979. But not circulated?
No; it constitutes an office record.

980. Lord *Elphinstone.*] Was not the publication to which I alluded in a former question, which was intituled, "Transactions of the Madras Engineers," for general circulation?
Yes; it was published for any one that wished to purchase it.

981. Besides that professional paper, do not the officers frequently contribute to the "Asiatic Society's Journal" and the "Bengal Journal," and other publications of that kind; are not the chief contributors to those publications officers of the army?
Yes, and gentlemen of the civil service; but I do not think the "Asiatic Journal" ever had much animation at Madras.

982. Earl of *Ellenborough.*] Are any military and other books furnished from home by the Government for those libraries?
Yes; valuable works are sent out for distribution to the departments of the army, and in the excellent libraries established for the European soldiers; none are sent for officers generally.

983. For instance, has not the "Engineers' Manual," which has been published in England, been sent out?
Yes; the engineers' papers are sent out regularly to departments.

984. Marquess of *Tweeddale.*] Would it, in your opinion, affect the efficiency of the service if greater facilities were afforded for their return to England?
It would be very beneficial, I think; there are many officers that would avail themselves of the opportunities of returning to Europe, and I know of several who, under the existing regulations, having done so, have studied in this country, and returned to India with very high qualifications as civil engineers and surveyors; they have also had opportunities of seeing the military systems on the Continent, and in every way enlarging their minds, and improving themselves professionally.

985. Earl of *Ellenborough.*] Are not their minds sometimes a little unsettled for service in India; do they not, after having been at home three years, and then returning to India, rather wish to come back again?
I could state many cases where the result has been quite the contrary.

986. You mean cases in which they have preferred India to England from experience?
I think many young men go out without knowing the advantages of their own position, or the difficulties of life; they imagine when they get out to India, and find the country monotonous, that they would have done better to remain in England, with their friends to push them in some other profession; but when they return to England with a little more experience, and see there the strength of competition there is for everything, they return very often, I think, much better satisfied with their own lot in India, and aware of the advantages that country affords to men of enterprise and ability.

987. Marquess of *Tweeddale.*] Is promotion sufficiently rapid in India to ensure officers rising to high rank and important commands, while they still retain their natural vigour, and their energy and faculties?
Generally, I should say not, as regards the higher ranks of the army; a man may attain promotion, and be a very efficient field-officer as Major or Lieutenant-colonel; but when he rises to be high up on the list of Majors-general, or a Lieutenant-general, then, I think, you will find they are very commonly too much advanced in age for their duties on active service.

988. Earl of *Ellenborough.*] Is not the system by which an officer returning from Europe after two years' absence, is, according to his seniority, placed in a divisional command, quite inconsistent with the efficient administration of the army?
A great deal of that must depend upon the qualifications and energies of the individual officer; there is no doubt that many have so returned, and I think that they must have been appointed to command more with reference to their former services and good character, than to any very highly efficient duties they could then perform.

Colonel *Robert Alexander.*

2d Dec 1852.

989. May it not often happen, that an officer who has remained almost constantly doing his military duty in India, may, at the time when he expects a command as a reward for his services, be superseded by an officer returning from Europe who has been there the last 15 or 20 years?

I should think very rare cases could be found of an officer returning who has been 15 or 20 years in this country. He could only remain so long if he was a full Colonel, with the off-reckonings of his regiment; and when you consider the age which the man would have reached 15 or 20 years after attaining that position, I should think there is very little probability of his wishing to go back to a divisional command.

990. Marquess of *Tweeddale.*] Do not the Court of Directors sometimes send out officers, appointing them to divisions?

Never in the present day; they used to do so formerly.

991. *Chairman.*] How many years has that practice been abandoned?

The last instance I can call to recollection at this moment was General Fraser, somewhere about the year 1827 or 1828. I remember his coming out, from the circumstance of his being sent to supersede the General Officer to whose staff I was attached: for that reason, I recollect that circumstance particularly; but I think also that Sir John Sinclair was subsequently, and perhaps the last, so sent out.

992. Marquess of *Tweeddale.*] What consequences follow from the system of junior officers purchasing out their seniors; and should that, in your opinion, be encouraged or discouraged?

It should be regulated. One consequence that follows is, that it very often involves the juniors very much in debt.

993. Earl of *Ellenborough.*] At what rate of interest are the juniors able to raise the money which they are compelled to pay to buy out the seniors?

A very common way in which it is done is one by which, after a short period, the expense is about 13 per cent. for interest on money borrowed.

994. Does that include life insurance?

The whole expense would be about 13 per cent.; but it is on the best security that the officers can give jointly and severally.

995. If an officer borrowed on his individual security, could he borrow at 13 per cent.?

It depends very much upon his character. In India, where one person might borrow at 9, or more readily 12 per cent. per annum, another would not get money at less than 4 per cent. a month, if even at that rate.

996. But, in addition to the interest, there is the commission and life insurance?

I think the whole would be about 13 or 13½ per cent.

997. In Bengal is it not nearly 18 per cent.?

It may run higher there; but my impression is, that it is about 13 or 13½; I am speaking of instances where they get money from the banks.

998. Marquess of *Tweeddale.*] Are the officers of the army generally in debt, and if so, what is the cause of it, and what preventive measures can be adopted?

One cause is the purchasing out of seniors. An officer may be unwilling to involve himself in debt, and yet not have that moral strength which enables him to resist the public opinion of his regiment. There are also strong temptations to extravagance which frequently involve officers in debt; and I think there are expenses thrown upon the officers from which they ought to be relieved. In the Madras army now, a large proportion of the regiments have bands attached to them; and under the constitution and feelings of the army now, a band is becoming as much part of the military establishment as any other department. The whole expense of that is thrown upon the officers; and the assistance of musicians on the pay of a Havildar and Sepoys, given to them to maintain the band, does not, in fact, sufficiently relieve the pecuniary pressure. I see no reason why the Government should not support regimental bands rather than the officers. One efficient means of checking debt is by holding commanding officers strictly responsible that the mess is not allowed to be in debt, and that no officer is allowed to have his mess bill unpaid after the next issue of pay after the expense has been incurred.

999. Earl of *Ellenborough*.] Is not the cost of the bungalows another cause of their getting into debt?
They are liable to heavy losses on that account; but in the Madras army, the purchase of bungalows is not so common as in Bengal; as with us, the officers can generally rent them; but I have known many of the officers of a force ruined for a time, and all losing nearly everything they possessed, by being ordered to leave a station, and getting no compensation for the losses which they sustained by their bungalows.

1000. And if they are sent to a new station, at which they will have to build bungalows, where are they to find money for that?
If they have no private fortune of their own, as but few have, they must borrow.

1001. Marquess of *Tweeddale*.] Could promotion be accelerated by employment being more largely found for officers who have been wounded, and of weak constitutions and impaired health, and who are on the invalid pension establishments in civil situations under the Government, or on the civil staff of the army?
I think that for those duties, employment might be found that would induce officers to leave the active branch of the service: it is in some degree done now in the case of officers who are transferred to veteran battalions, and are employed in the payment of pensioners, and in some trifling duties of that and similar kind; but if more important employment were found for officers in civil departments who are not fit for active field service, the efficiency of the army would be increased, and promotion accelerated.

1002. Earl of *Ellenborough*.] Might not those departments become very inefficiently manned if you were to take for them old gentlemen, who were unfit for active service?
The Government, I think, would find its finances very much improved if they had a better organized system of paying their very numerous pensioners; for example, in the Military Pay Department, they might have officers who are not altogether fit for active field service, and partly in the Commissariat Department. I draw a distinction between superannuated old gentlemen and men in possession of sufficient mental power and activity, who are physically unfit for active field service in an Indian climate.

1003. Must not the Commissaries move about with the army?
Some of them must; and there must be active Field Commissaries. I would refer more particularly to the magisterial duties performed by the Commissariat, which, with the greatest benefit to the public service, ought to be put in other hands.

1004. *Chairman*.] You alluded to the Veteran Battalions; do they form a considerable part of the force at Madras?
The Native Veteran Corps were reduced in numbers some years ago. We have only two Veteran Battalions of Natives, and there is a European Veteran Corps, divided into Artillery and Infantry. The Artillery are stationed at Palaveram for duty, at Fort St. George, and the Infantry at Vizagapatam. The Native Veterans do much valuable duty, and at times have too hard work in garrison at Fort St. George and on escort detachments.

1005. Are they included in the general strength of the army?
Yes, they are included as veterans.

1006. Lord *Elphinstone*.] You said that you thought that a better system of paying the pensioners might be adopted; you would not propose to revert to the system of paying them at the head quarters of divisions?
No, most certainly not.

1007. That would be very objectionable?
Decidedly.

Colonel *Robert Alexander.*

2d Dec. 1852.

1008. You remember that that system was for a time in force, and we reverted to the former system?

Yes; it entailed the greatest hardship upon the pensioners.

1009. In fact, did it not do away with the good effect, politically, of giving pensions at all, because it made a number of discontented men?

It diminished very powerfully the good effect of pensioning; it was a matter of such hardship for many of the poor old pensioners to come periodically for their pensions, that nothing but the alternative of destitution would have induced them to undergo what they did for the sake of those dependent on them.

1010. Earl of *Ellenborough.*] Have instances been discovered of fraud on the part of persons pretending to be pensioners, and obtaining pensions?

Yes, and I believe very great frauds now exist; and therefore I think it would be so much the interest of the Government to have a better supervision of the payments throughout the country.

1011. Marquess of *Tweeddale.*] Would you recommend any change in the present system of appointing officers to the army as cadets?

I think the appointment of Engineer and Artillery officers is as good as it can be; their education I believe to be equal to any given to officers in similar branches of such services elsewhere. But there is one very important improvement which should be made. At present a Cavalry officer is appointed just as he may be connected with or nominated by an East India Director; and when he gets to India, he may have none of the qualifications for that branch of the service; he may be personally unfit to ride well; and though he may pass through his service respectably enough as a man, yet, not being even a tolerable horseman, he ought never to have been in that branch of the service, though he might make a very good Infantry officer. I think, if a certain number of Cavalry appointments were made the rewards of good conduct at Addiscombe, as those to the Engineers and Artillery are of superior acquirements and qualifications, that it would be a great improvement; and also if, even after officers had been in India a certain time, not too long, exchanges were allowed between the Cavalry and Infantry branches of the service.

1012. Earl of *Ellenborough.*] Do you think there is any great advantage in having a Cavalry appointment rather than an Infantry appointment, taking into consideration the expense of finding a horse?

The Cavalry is always considered the preferable service in the army, inasmuch as it is in appearance a more dashing one; but I think, on the whole, the advantages of the Infantry officer are fully equal to those of the Cavalry.

1013. Does not an Infantry officer see a great deal more of real service?

He has more of the practical duties and work in India.

1014. Are not there many more Infantry stations than Cavalry stations?

At all the large stations you find some regiments of Cavalry; the Infantry are more scattered about the country; there are at present eight stations of the Madras army with Cavalry.

1015. Do not the Infantry see a great deal more of the country than the Cavalry do?

Yes; and of the practical work of the army.

1016. And they are equally competent to hold any staff appointment?

All are equally eligible; the command of Cavalry regiments and troops are more lucrative than any that an Infantry officer has to look to regimentally.

1017. Marquess of *Tweeddale.*] How do officers succeed to the command of regiments, brigades and divisions?

They succeed to the command of regiments by seniority; but there has been great difficulty in providing for the most efficient command of regiments, in consequence of the restrictions imposed upon the Commander-in-Chief.

1018. Earl of *Ellenborough.*] What are those?

At present the Commander-in-Chief cannot remove a Major from one corps to command another; to remove a Lieutenant-colonel often involves him in great expenses and pecuniary loss; and under the existing orders, it may happen that a very young captain, or even a subaltern, may command a regiment, while,

alongside

Colonel Robert Alexander.

2d Dec. 1852.

alongside of it, another has two old field officers present, and the Commander-in-Chief has not authority to remove one of those old officers to the other regiment. He has not the oppportunity to remove a Lieutenant-colonel from the corps in which he has risen, nor the authority to remove a Major to hold a command. This subject was very much before every Commander-in-Chief during the time I was Adjutant-general. The system then acted upon was, that as the Majors could not be removed, the Lieutenant-colonels were removed, so as to give to every Major, who was considered qualified to command, the command of his regiment when it was due to him by seniority; this imposed very great hardship upon the Lieutenat-colonels. Since then, the Court of Directors have ordered that the Lieutenant-colonels are not to be moveable; that they are to remain with the regiment in which they have risen; so that one regiment now may have a Lieutenant-colonel and a very old Major in it, while another regiment is commanded by a young Captain, or a subaltern.

1019. Was not the practice formerly, for the good of the service, to remove from a regiment going to the presence of an enemy, a Lieutenant-colonel who was incapable of commanding, and to place him in the command of some other regiment at a distance, so taking care that the regiment should be commanded efficiently?

I remember but one Lieutenant-colonel being moved under those circumstances; and he would, I presume, have been invalided, as the Commander-in-Chief intended to have brought him before a Medical Board for being unfit to go with his regiment on active service; but the officer pleaded his long service, and asked permission to return to Europe for the recovery of his health, he never having had a furlough to Europe on sick certificate; he obtained leave, and died in England. One great objection to moving the Lieutenant-colonel is, that you may send him from a full batta station to a half-batta station for the good of the service, at the loss to him of the difference between field and garrison allowances; whereas a Major, who by removal obtains the command allowance of a regiment, would always be better off in a pecuniary point of view: a Major finds, too, very often more difficulty in exercising authority over his former companions than he would have amongst another set of officers.

1020. Has not he a great deal more influence over the troops if he is a good officer?

He has that; but I think a good officer will soon acquire that influence anywhere.

1021. Marquess of *Tweeddale*.] Could the present usual course, in your opinion, be improved?

Very much, and particularly in selecting the Commanding Officers for European regiments.

1022. How is the selection now made; is not it made by the Commander-in-Chief?

No; it is very much limited by recent orders; while I was in India, the ordinary practice of the Commander-in-Chief was to remove the Lieutenant-colonels, because he was not allowed to move the Majors; the orders are now not to move the Lieutenant-colonels.

1023. *Chairman*.] The power of moving the Majors is not given?

No. European regiments have suffered very materially in their discipline, from the Commander-in-Chief not having the power of making such arrangements as would enable him to appoint to them such officers as he thought best fitted to command them: the appointments to Brigade commands are generally by seniority: for the first and second class brigade commands, the Government selects officers without reference to the Commander-in-Chief; but if the head quarters of two regiments come together, that constitutes a third class, and the senior officer who is there, commands, as a matter of course, in virtue of his commission: for the divisional commands also the general officers are appointed by the Government, without reference to the Commander-in-Chief.

1024. Lord *Elphinstone*.] But probably in consultation with him?

Without official reference; and I have known officers appointed when the Commander-in-Chief knew nothing of it previously.

Colonel Robert Alexander.

2d Dec. 1852.

1025. Marquess of *Tweeddale.*] What opportunities have the officers of visiting England, and are they, in your opinion, sufficient?

After 10 years' service an officer is allowed to return to England in the receipt of his pay for three years. He may, with the permission of the Commander-in Chief and the Government, return at any time before that, without pay, or he may take his three years' furlough after 10 years' service at different times, but he cannot exceed that amount. Besides that, the officers are allowed to return on medical certificate for three years at a time.

1026. Earl of *Ellenborough.*] For any period not exceeding three years?

Yes; and an officer who has been on medical certificate, can have his furlough also.

1027. After returning from absence on a medical certificate, when he has been away three years, finding himself ill in the first week of his return, may he not go before the medical officer, and get another medical certificate for three years?

He may; but there is an order that such cases are to be brought to the special notice of the Court of Directors.

1028. Lord *Elphinstone.*] What portion of his pay does he draw while he is on medical certificate?

Full pay.

1029. Lord *Wharncliffe.*] Are those medical certificates easily obtained?

There were recently in the Madras army orders issued that made them more stringent; they are sometimes given with very great facility.

1030. Earl of *Ellenborough.*] Are they not supposed to be occasionally refused with some degree of harshness?

I think they are given upon every fair necessity; I do not remember instances of harsh refusals; but several have occurred in which they appeared to be granted too easily.

1031. Lord *Wharncliffe.*] Are they ever given from favour, where the case would not justify it?

I should say, generally, that they are not given without circumstances which might be urged in justification; but sometimes it requires a great deal of firmness on the part of the medical officer to resist the strong feelings or wishes of his patient to go away. The recent orders in Madras were framed with a view to relieve the medical officer from being placed in so painful a position.

1032. Earl of *Ellenborough.*] Might not that which the medical officer declares, be declared of every European in the country, namely, that his health would be benefited by a residence in Europe for three years?

Yes; but the case must now go before a board or committee of medical officers, and then it passes under the supervision of the Medical Board at the Presidency.

1033. But still the finding is no other than that, that it will be better for his health to live in Europe than in India?

Yes; if an officer is at a station where there is only one medical officer, he would immediately leave the station upon his certificate; and on his arriving where a Medical Board can be assembled, he would have immediately to appear before it.

1034. *Chairman.*] Have any instances happened of an officer being passed on the first examination, and being refused on the second?

I do not remember that; but I have known the same officer obtain a medical certificate in one division, and be refused it in another.

1035. You have not known it refused on the second examination, after it had been granted on the first?

I do not remember any instance of that since this system of examination by Boards came into practice. The Medical Board at Madras on one occasion objected to a Staff Officer going to the Cape, as previous visits to that colony did not appear to have improved his constitution, and the Board recommended that he should go to Europe.

1036. Lord *Elphinstone.*] Do you not remember instances before the Medical Board of Madras?

I have

I have known instances of the Medical Board having remarked very strongly upon cases that had been sent up.

1037. Marquess of *Tweeddale*.] Was it not necessary at one time to call the attention of those Boards in the interior to the importance of sending the officers to places that were best suited to the state of health they were in?
Yes; it was the common practice to send them to the Presidency, and that was changed to sending them to other places on the sea-coast. At the Presidency they were, of course, exposed to the temptation of all the gaiety and society of the place, and the climate there is for purity of air not equal to what it is at Vizagapatam, Cuddalore, and many other places along the coast.

1038. Earl of *Ellenborough*.] Do they not, in many cases, give medical certificates to go to the Neilgherries?
Very often.

1039. Marquess of *Tweeddale*.] Does an officer lose his pay when he is sent to the Neilgherries on sick certificate?
He loses nothing of his regimental pay for two years when he goes on sick certificate.

1040. Or his staff allowances?
He loses half his staff allowances, which go to the officer acting for him.

1041. In the Bombay service can you state what the officer loses?
The rule is applicable to all India; it is one of those general pay regulations which apply to all India.

1042. How long has that been the case?
That has always been the case, that officers going on sick certificate in India, have kept their pay and regimental allowances. If an officer has a furlough on private affairs, after six months he loses what is called his allowances, retaining only his regimental pay.

1043. Earl of *Ellenborough*.] Has not the reduction of the pay of the officer, under any circumstances, the effect of depriving him of things which are really necessary, not merely superfluities?
I do not remember an instance in which the period of furlough was exceeded, and the officer was subjected to the loss of his allowances; but it might be, that if, for example, he is a man with a family, and on account of their health he required more than six months' leave for himself, then such a diminution of his income would be very distressing to him.

1044. Is it not the fact that there are few officers who have not many expenses in England, as well as in India?
There are many who remit money. I have known many most noble examples of officers supporting their families, widowed mothers and sisters; and married men, if they can afford to send their families home, have, of course, to support them.

1045. Is not that generosity towards their relations more the rule than the exception?
Certainly, I should say so.

1046. Marquess of *Tweeddale*.] Have you formed any opinion regarding the manner in which the command of the several armies of the different Presidencies is now exercised; do you think it might be improved?
I think that every Presidency should have its own Commander-in-Chief, as at present; but I think that in many instances the Commander-in-Chief's authority could be placed in a much more efficient way than it now is, and that doing so would give greater efficiency to the military organization of India. I would venture to suggest, that if the idea should be carried out of a Central and Supreme Government, disconnected from any Presidency, the military organization would be most efficient with a Commander-in-Chief, or better still with a Minister of War, attached to the Supreme Government, with a competent staff, composed of officers from Her Majesty's service, and from the armies of the different Presidencies attached to him; so that while each army maintained such of its own privileges and peculiarities as cannot be advisably done away with, a general system of economy, discipline and tactics should still be effected,

Colonel Robert Alexander.

2d Dec. 1852.

so far as might be found wise and practicable: the great objects of large movements, and the stratagy of campaigns, must also, with such an officer to assist the civil Government, be much better arranged and carried out than at present.

1047. Earl of *Ellenborough.*] Especially as regards the Commissariat, when the two armies acted together?

In every respect I think.

1048. Lord *Wharncliffe.*] Do you think that any evils arise from the present system, in case of active operations?

I think they do. I think this, that while the officers of one Presidency have to arrange the affairs of all the others, they are liable to be influenced too much by their own peculiar views; and I do not think they are sufficiently instructed in the military resources, capabilities and feelings of the others, to manage them with full efficiency.

1049. In what sense do you use the expression "managing" the other armies, as the Commander-in-Chief of India has no authority over the armies of any of the other Presidencies?

It is the want of that authority that I think is a defect. The Commander-in-Chief of India has nothing to say to the army of another Presidency, unless he goes into the Presidency, and then he assumes the command; but it is the want of such an authority at the supreme seat of Government that I think very much paralyses the energies of the whole armies of India, everything being brought to the standard, and the ideas of the Bengal army. I do not say that the Commander of the Bengal army should command the others, but that there should be a Commander or authority over the whole entirely, unconnected with any particular Presidency.

1050. Earl of *Ellenborough.*] Does the Governor-general interfere otherwise than in the distribution of the armies of the Presidencies?

Many points of detail must be referred for the sanction of the Governor-general.

1051. That is to say, all innovations?

All innovations, and most alterations; and the other armies are always liable to receive whatever orders and instructions may be sent regarding their organization from the Governor-general, or by those acting under his authority.

1052. Lord *Wharncliffe.*] Supposing the scheme you have suggested were adopted, of a Commander-in-Chief for the whole of India, who would be generally within the Bengal territories, would it not be likely, under an arrangement of that sort, that there would be an attempt to assimilate the armies of the different Presidencies?

So far as assimilation could be wisely carried out, it would be advisable to do so; but if, for example, an officer of high rank and experience, with a permanent interest in the Government and armies of India, surrounded with a competent staff of officers selected from all the Presidencies, were in such a position, he could have such information and full views of every subject placed before him as would prevent any local feelings and prejudices interfering with the grand organization and fullest efficiency of the whole Indian army in all possible circumstances.

1053. Are you of opinion that it is a desirable object to attain, to assimilate and amalgamate the three armies of India?

In matters of discipline and for united action, certainly; but there have been many points on which there have been attempts to assimilate, which I think have worked very ill, and as to which, assimilation, in the way it has been attempted, is not desirable.

1054. Lord *Elphinstone.*] Have not the only instances of discontent of late years in the Madras army arisen from measures intended to assimilate the practice and the pay and allowances of that army to those of the Bengal army?

With one exception, and that was at Bangalore, when there was a feeling of sedition among the Mahomedans against British rule, totally unconnected in its origin with any military question, and a conspiracy was got up by an emissary from Hyderabad. Since that, there has been nothing but the alarm felt by the Native troops at the interference with their old privileges of pay and pension.

1055. Can

Colonel Robert Alexander.

2d Dec. 1852.

055. Can you inform the Committee whether the advantages conferred upon the Madras army by these measures of assimilation, and which were estimated at the time to be fully equivalent in point of expense to the reductions effected by them, have been appreciated by the Madras Sepoy?

The Madras Sepoy had his faith very much shaken by those changes; some of them are undoubtedly beneficial to him; others were not so acceptable, as the old pension and pay regulations which were in force anterior to 1834.

1056. If the advantages have been overlooked by the Sepoy, while the reductions have led to serious discontent, is not the expediency of these measures of legislation very doubtful, no practical inconvenience having resulted from the former diversity in these respects, and absolute uniformity being out of the question?

I think every officer of experience in India would deprecate any unsettlement of the Sepoy's mind regarding his pay and allowances; some of the evils that were introduced were corrected, particularly as regards wound pensions. The old system of pensioning Sepoys after 20 years' service on three rupees and a half, they were perfectly satisfied with. The new system of pensioning them after 15 years' service on four rupees a month is evidently a very great boon to them, and I think very injurious to the public service; they were very much dissatisfied at the reduction in pensions to heirs of those killed in action, or who died on foreign service, which was ordered in 1834, though they did not feel it practically till some time afterwards; but I think it would require great and very serious consideration before it would be advisable to make any change in the existing system of pensions. What would be most beneficial to the Government would be, if possible, to get rid of the four rupees pension after 15 years' service, and to introduce what would really be a system of rewarding good conduct. There is, at present, this anomaly in the army, that the Sepoy is entitled to his pension, and to retire to his village in independence on four rupees a month if he can get passed by a Board of Medical Officers, one year before he is entitled to any good conduct pay for his services in the ranks.

1057. Marquess of *Tweeddale*.] What changes have taken place in the pay and allowances of the Native troops in the Madras Army of late years?

The first change was in 1834, when the wound pensions were reduced. In 1836 the pay of the Cavalry, Horse Artillery and Golundauze, as well as the batta of the whole Native army, was reduced.

1058. Who are the Golundauze?

The Native Artillery; the pay of Havildars and Naiks was increased throughout the army; the pensions of the Native officers were reduced, and that will tell hereafter. When I left India, no Native officer of Cavalry had been pensioned on the reduced scale. My own impression always was, that when they practically feel the change, by having pensions of 25 rupees a month given to the Soubahdars, that will create a general feeling of dissatisfaction amongst them. When those reductions were made, the Order of British India and Order of Merit were introduced: those were advantages; but there were before that, very highly prized advantages in the rewards given by the Government for meritorious service, by the grant assignments on land revenue of palanquin allowance, the gifts of swords, and the pensioning of the heirs of distinguished officers and soldiers: those were done away with when the Orders of British India and of Merit were given. When the batta was taken away from the Native army, it was given to the European officers and soldiers more liberally than ever, and established an invidious distinction; that is evident in a Native Regiment when the Native Soubahdar Major loses his batta, and the European Serjeant Major retains the allowance.

1059. Lord *Elphinstone*.] And gains it in some places where he did not get it before?

The European has it everywhere beyond 200 miles from the Presidency.

1060. *Chairman*.] How were those alterations introduced, by the Governor-general, or by the authorities at home?

They were introduced by the Governor-general, under the orders or sanction of the authorities at home.

1061. Are they supposed to emanate from the Governor-general, or from the authorities at home?

Colonel Robert Alexander.

2d Dec. 1852.

There was one important measure which created a great sensation, which I believe entirely emanated from the home authorities, that of putting all the officers of the Bengal army on half batta; that order was issued, and afterwards rescinded. The measure having failed, the Court of Directors put the whole of the Europeans of the other armies on full batta at 200 miles from the Presidency, giving them the very privilege which at one time had been ordered to be withdrawn from the Bengal army, and took from the Natives the batta they had immemorially enjoyed at stations beyond the frontier of the Company's territory.

1062. Earl of *Ellenborough.*] Do not usually alterations in the details of the management of the army emanate from home; is it not a point upon which the local Government does not take upon itself to decide without communication with the home authorities?

In all cases I believe that the alterations either emanate from, or are approved of by, the authorities at home, unless it is some not very material points.

1063. Marquess of *Tweeddale.*] What effect have these changes had upon the native feelings?

They have very much unsettled the faith which the Native soldiers formerly had, that, under all circumstances, there was a certain provision for them by the Government. I think it has made them much more think of their own rights, and be more jealous about whatever may appear to them an innovation upon them.

1064. What is the feeling of the Native troops as regards foreign service?

They are always ready for foreign service; and if their stay there is not to be too long, they will go upon it with readiness and enthusiasm.

1065. What do you call "too long" a stay on foreign service?

I should not call any period too long while there was active warfare; but in garrison they certainly should never, under any circumstances, be kept more than three years away from India.

1066. That is the order?

That is the order.

1067. Did you never know a regiment in the Madras army refuse to go on foreign service, if they had the privileges to which they supposed themselves entitled?

No, never.

1068. Lord *Elphinstone.*] Was not the reluctance of the two regiments that proceeded to China in 1842 owing to the reduction of part of the pension; the pension to their heirs?

Entirely on account of reduction of pensions to heirs and for wounds.

1069. And to no other cause?

Not the least.

1070. Earl of *Ellenborough.*] When a Madras regiment is ordered on foreign service, what is done with the families of the soldiers, who usually attend them in the camp?

Every soldier appoints where his family shall reside, and has the privilege of granting a family certificate to the amount of two-thirds of his pay. Generally, all the families of a regiment reside at the same station, at least the bulk of them; and a Native officer, two or three old non-commissioned officers, and a small detachment of old Sepoys, the least fit for active service, are sent with them. The Native officer has the superintendence of their interests; he communicates with the staff officer, or the officer in charge of the payment of their family certificates, as may be necessary. The families are under his charge where he resides, and the others live wherever their fathers or husbands appoint. Their monthly allowance is paid with the same regularity that the troops in garrison receive their pay.

1071. Then the majority remain at what may be considered the head quarters of the regiment?

At the place where the regiment is raised.

Colonel Robert Alexander.

2d Dec. 1852.

1072. Is it the custom to bring back the regiment at stated periods to the place where it was raised?

It used to be a fixed custom in the Madras army, but of late it has not been so much attended to as it ought.

1073. Marquess of *Tweeddale.*] When a regiment comes back from foreign service beyond sea, it comes back to Madras?

Yes, they are landed at Madras.

1074. Is not there an order that the men shall receive leave of absence for a certain number of months, depending upon the distance which they have to return to their homes?

That is always done. Sometimes the regiments march to a station near the place where the men are going to on furlough, and the leave of absence is granted there: their convenience is consulted to the utmost. If the regiment is marching in the direction of their families, we give the leave of absence after they arrive there; but if the bulk of the families should be in another direction, we allow the men to go on leave from Madras at once.

1075. Earl of *Ellenborough.*] You are aware that there is this distinction between the Bengal and the Madras army, that the Bengal soldier never has his family with him in the cantonments?

I am.

1076. Lord *Colchester.*] What proportion of the men get this leave of absence at one time?

As large a number as possible; but at times, when there is a deficiency of troops, the Commander-in-Chief has been occasionally obliged to limit it more than he would have done had he had troops enough for the different duties at the station of the regiment: if they can be spared, they are allowed to go as largely as possible.

1077. Earl of *Ellenborough.*] If the troops return from Ava six months hence, would not the usual course be to give a furlough of about four months to the Sepoys of those regiments?

Something would depend upon the distance of their homes; but I should suppose at least that.

1078. Marquess of *Tweeddale.*] Do not some of the Northern Circars get six months leave of absence?

It depends upon the distance; we always take into consideration the distance that the men have to go; some of our men who get leave, will go up to Hindostan.

1079. Earl of *Ellenborough.*] But that is not to any great extent?

Not to a very great extent.

1080. Generally speaking, are not the troops forming the Madras army serving as soldiers at a less distance from their homes than the troops forming the armies of the other Presidencies?

Some of them are a very great distance from their homes; for example, the troops at Jubbulpoor, Saugur and Mhow, might have been raised at Trichinopoly, or further south.

1081. Where are the Madras troops generally raised?

Each regiment raises, as much as possible, its men at the place where itself was raised; we raise them within our own territories, and principally about Trichinopoly, in the Carnatic, the Ceded Districts and Northern Circars; there are also natives of Hindostan, who are excellent soldiers, in our ranks.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to To-morrow,
One o'clock.

Die Veneris, 3° Decembris 1852.

LORDS PRESENT:

The LORD PRIVY SEAL.	Lord ELPHINSTONE.
Marquess of TWEEDDALE.	Lord WODEHOUSE.
Earl of ALBEMARLE.	Lord COLCHESTER.
Earl GRANVILLE.	Lord ASHBURTON.
Viscount CANNING.	Lord MONTEAGLE of Brandon.

THE LORD PRIVY SEAL in the Chair.

Evidence on the Government of Indian Territories.

COLONEL ROBERT ALEXANDER is again called in, and further examined as follows:

Colonel Robert Alexander.

3d Dec. 1852.

1082. Marquess of *Tweeddale.*] YOU were asked one or two questions yesterday upon foreign service; the first question that was put to you was, what was the feeling of the Native troops as regards foreign service: when a regiment receives an order to hold itself in readiness for foreign service, how do you, as Adjutant-general, convey that order to the regiment?

In the case of an order coming for a regiment to prepare for foreign service, the Adjutant-general has in his office the form of a letter, the draft of which was originally called for by the Supreme Government, and it was authoritatively fixed that that letter should be the one addressed to all Native regiments ordered on foreign service; it commences by directing that the Commanding Officer of the regiment shall give every Native officer and non-commissioned officer and Sepoy his option whether he will go on that service or not; and should he have any objection, on account of caste, or for any of the other reasons specified, he is allowed to remain behind; the letter then goes on to state particularly everything which the Sepoys are entitled to in the way of rations on board ship and on shore, batta, pension, and every privilege granted to them on foreign service; the contents of the letter are translated, and communicated to every man in the regiment.

1083. Lord *Elphinstone.*] What is the date of the order to which you refer?

I cannot fix the date exactly, but it was sometime in the year 1845, or in the year 1846.

1084. Marquess of *Tweeddale.*] That refers to the Sepoys?

Yes, to the Native officers and Sepoys; to every Native in the regiment.

1085. After the regiment has received that order, what do you call upon the Commanding Officer of the regiment to do?

All the orders are stated in that letter; the officers commanding the companies have to prepare the family certificates of the men, and the usual preparations are made for embarkation and service.

1086. Will you explain to the Committee the meaning of the expression "family certificates?"

Every officer, soldier and Sepoy in the army, when it is going upon foreign service, is allowed to assign two-thirds of his pay for the support of his family during his absence; it is the same when they take the field in India on active service against an enemy.

Colonel Robert Alexander.

3d Dec. 1852.

1087. Has not great excitement occasionally occurred in the Madras army arising out of the civil authorities making a mistake in the allowances to which troops ordered on foreign service were entitled?

When the 47th Regiment of Native Infantry embarked for foreign service, they were landed at Bombay, and, according to the rule laid down by Sir Thomas Munro, those men were entitled to the privileges of foreign service while the regiment remained at Bombay, but the authorities there wished to put them upon garrison allowances, which created great excitement. There was another instance of a great mistake being made; when the 6th Light Cavalry were ordered up to Saugur, their old rate of batta was guaranteed to them under the authority of Government by the Commander-in-Chief; but the Pay Department stopped the batta, and that also caused a very great excitement in that regiment.

1088. Lord *Elphinstone.*] Was it not the fact that those privileges were not stopped by the civil authorities, but by military authorities?

I am speaking now of the civil staff authorities; for in India, the civilians, in contradistinction to military men, have nothing whatever to do with such questions, unless in their capacity of members of the Government. Those that I have mentioned were two instances, but I consider that, practically, unnecessary difficulties are often thrown in the way of officers and men readily obtaining that which is due to them, in consequence of a want of simplicity in the working of the Pay and Audit Department.

1089. *Chairman.*] Do you consider that to be a military department?

It is the civil staff of the army. Lord William Bentinck clearly defined what was the military and what the civil staff of the army, and the Pay and Audit Department is considered to be part of the civil staff.

1090. Are the officers of that staff civilians?

No, they are all military men; but they are ineligible while on the civil staff to exercise military command.

1091. Lord *Ashburton.*] Both in the cases of the 47th Native Infantry and the 6th Light Cavalry did not mutinies ensue?

To the best of my recollection, I should hardly say that in the 47th Native Infantry mutiny ensued, but there was great excitement; there was serious mutinous conduct in the 6th Light Cavalry.

1092. In each case was it not absolutely necessary to punish the mutineers?

I was not present at army head quarters on either occasion; and I do not now remember so particularly the circumstances of the 47th Native Infantry; I remember that in the case of the 6th Light Cavalry it was necessary to punish the mutineers.

1093. In both instances was not faith broken with the Sepoys?

Faith was broken with the 6th Light Cavalry; and, according to the interpretation established by Sir Thomas Munro, when Governor of Madras, of what constitutes foreign service, it was also broken with the 47th Native Infantry.

1094. Was there not an implied engagement given to the 47th Native Infantry, that they should have a certain batta, which batta was afterwards withdrawn?

Not having issued the orders myself, I cannot speak with perfect accuracy; I can only express my belief; my belief is, that they received the usual orders for embarkation for foreign service, and that under those orders the men considered that, having once embarked, they were entitled to their batta and the privileges of foreign service until their return from the service for which they embarked. Whether they were delayed on the way for the purposes of the Government, either at Bombay or elsewhere, the Sepoys would have considered that the Government was pledged to give them their allowances until their return within the Madras territory.

1095. Had they not, in consequence of this implied engagement on the part of the Government, assigned a portion of their pay to their families?

Certainly.

1096. And that pay so assigned they could not receive?

No; its payment was immediately stopped from them, to be given to their families.

Colonel Robert Alexander.

3d Dec. 1852.

1097. And their inducement to volunteer upon that service, was the assurance that they should leave their families in a state of comfort at home?

Certainly. One great inducement for the troops to volunteer for foreign service upon all occasions, is the provision made for their families during their absence.

1098. *Chairman.*] Are the majority of the men married?

Yes, most of them in our service are married; generally speaking you may say the Madras Sepoy is a married man.

1099. Lord *Colchester.*] Does this power of allotting a portion of their pay to their families prevail in the other two Presidencies?

I cannot say positively. I do not think that it has hitherto existed in Bengal in the same manner as with us, and I am not sure whether it exists so fully in Bombay. I believe it will be found that the first instance of Bengal troops enlisting for active service against an enemy, was when a battalion of volunteers was raised at Barrackpore, and high inducements held out for the Native officers and men to proceed to China. The Bombay troops have, I believe, readily embarked whenever required; they have served with great distinction at the Mauritius, in the Persian Gulf, and elsewhere, but have not been so much accustomed to foreign service as the Madras army, which, so far back as the year 1756, accompanied Lord Clive on foreign service to Bengal: in the year 1792, 2,000 men volunteered to go with Colonel Draper's expedition to Manilla; in 1794 more men volunteered for service to Amboyna than were required: the Madras Sepoys have since served in the Eastern Seas, in Ceylon, at the Mauritius, in Birmah, Aden, Scinde, and China; and so long as their allowances and privileges are secure to them, you have an army ready to go anywhere that the State may require their services.

1100. *Chairman.*] Has that faith been shaken?

Yes, it has; and my impression is, that the Sepoy character in that respect has greatly altered in the last 20 years.

1101. Marquess of *Tweeddale.*] Were there not other cases of excitement or mutinous conduct arising from the same cause; was there not a case at Hyderabad?

That was also a case of great excitement; the 4th Cavalry were very insubordinate, and their conduct mutinous, in consequence of the batta being taken from them, though it had been for years before mentioned in the general orders that such a reduction was to be made. The Sepoys are no readers of general orders; they place implicit faith in the Government, and they look very much to that which is of great importance to them, the "mamoul," which may be translated the custom or traditions of the service.

1102. Was not there some excitement with the 41st Regiment?

There was an excitement, when they were embarking for China, about pensions to heirs and wound pensions having been reduced.

1103. Lord *Elphinstone.*] Are those pensions to the heirs of Sepoys disabled or killed on foreign service?

Yes, for Sepoys disabled, and to the heirs of those that are killed. New pensions were introduced, by which a man under 15 years' service, who had been disabled for further service, and thus thrown destitute upon the world after eight or ten years' service, would, according to the scale then established, have received a pension of 1 rupee and 4 annas, or about 2*s.* 6*d.* a month.

1104. *Chairman.*] What was the pension before?

Under the old system, the pension was 3 rupees 8 annas for every man disabled on foreign service; he now receives, instead of that, 4 rupees a month. The order says, "A Sepoy who shall not have served 15 years, and have received such an injury as is equal to loss of limb, and is thereby disabled from following his profession as a soldier, shall receive 4 rupees a month."

1105. Marquess of *Tweeddale.*] What book is that to which you are referring?

The "Pay and Audit Regulations of the Madras Army."

1106. Lord *Monteagle* of Brandon.] In reference to the cases which you have been describing, in which there has been somewhat of a loss of confidence by

Colonel Robert Alexander.

3d Dec. 1857.

the changes that have been made, do you think that the same result would be produced upon the Indian army if changes of a similar kind were merely prospective with reference to persons entering the service hereafter, and if all existing rights were carefully maintained?

It requires some little knowledge of the Sepoy character to understand the effect produced upon them; all those changes were prospective, and were published in general orders; but the Sepoy does not care much about those orders in the Pay Department at the time they are so issued. When a Sepoy is enlisted, he has all the terms of the service put into his hands. But it is when reductions come practically upon the men that they feel them, and then it is that they argue that they are contrary to the old custom, and to their detriment. The foreign service in China was a most trying service to ignorant Sepoys like those of Southern India, who had never heard of such a place as China, except, perhaps, in some wild legend. It separated them from their families to go a long voyage, they knew not whither. Then they had to consider the circumstances and anxieties of their families around them, the probability of their return, the possible nature of the service, and that they might come back disabled, and be turned adrift in the world with 1 rupee 4 annas a month to maintain their families when their bodies should be crippled.

1107. Is it your belief, that though there was a formal announcement made to the Sepoys of the alteration that had been effected by authority, their conviction was founded upon the ancient custom rather than upon the announcement formally made to them?

Yes, I think so. I doubt whether the Sepoys ever thought much about the matter till the circumstances pressed upon them.

1108. Lord *Elphinstone.*] Was not the case of the men who were drowned in the "Golconda," on her passage to China, the first instance to which the new rates of pension applied?

That was the first time the alteration was felt by the Sepoys; the families of those men realized what the effect of the new system was.

1109. The families of those men who were drowned happened to be living in the same town, viz. Berhampore, where the regiments about to embark for China were quartered?

I think most of them were there at the time

1110. Marquess of *Tweeddale.*] Are any new changes in regard to pensions or other regulations translated into the book of the Company, and read to the Sepoys on parade?

They are entered into the book of the Company, translated, and read; and besides that, orders of importance are translated into Hindostanee, Tamil and Teloogoo, and hung up in their barracks.

1111. What is the effect of reading those changes?

I do not think it has much effect upon the minds of the Sepoys; some of them may recollect them. In the case of the batta that was stopped in 1841, the order had been issued four years before, viz. in 1837, but never carried into effect. The Sepoy does not personally consider the matter till the order to withdraw the batta comes into effect, and then they understand the thing practically, and feel excited.

1112. In the Queen's service, or in the European regiments in the Company's service, if an order were given out, the men would naturally understand what was meant to be conveyed to them, and would consider it for themselves; but when such an order is given out to a Sepoy regiment, do the younger soldiers look to the older soldiers for their opinions, and do they look to the mamoul which has been in force, or do they look to the order which has been read?

The younger soldiers look to the older soldiers, and all are attached to the mamoul; most likely the younger soldier would go to the older Sepoys, or to a Native officer, and ask him what was meant.

1113. Lord *Monteagle* of Brandon.] Do you think any step could be taken in the event of the issue of any order such as you have described, that would give to the Native soldier whom that order more immediately or prospectively affected, a better acquaintance with what the order really meant, and the effect it had upon his own individual interest?

Colonel
Robert Alexander.

3d Dec. 1852.

Every attention is paid to that now; at the time a Sepoy is enlisted, a statement of every advantage that the service holds out to him, from that day till he may be a Soubahdar Major, is put into his hands.

1114. Then the difficulty which you have described, and the contrast between the effect on the mind of the European soldier and of the Native soldier, arises, in your judgment, from the difference of character and the weight and import of the traditionary law upon the mind of the latter?

No doubt of it: I do not think I answered my Lord Tweeddale's question quite fully: at one time there was great excitement in the minds of the European soldiers; they had for a long time been receiving their pay as it was given to them at different rates of exchange; some of the newspapers alleged that those payments were not properly calculated, and about the year 1842 there was, perhaps, as much excitement, though differently expressed, in the minds of the European soldiers as there has been in the minds of the Native Sepoys: in consequence of this, the Commander-in-Chief sent in a clear statement to the Government, showing that the Europeans received their pay at one rate of exchange, their long-service pay at another; their pensions, perhaps, at one-third, and that the system was full of incongruities. When the matter was brought to the notice of Government and the Board of Directors, they settled the whole of those payments at a just and uniform rate of exchange; and wherever there was an advantage in favour of the soldiers, it was liberally continued to them. I think that now the only discrepancy is a slight advantage in favour of boys in European regiments, and I am not sure but there is some slight advantage of the exchange in favour of one of the items of the European soldiers' pensions; I know, however, that there is no calculation made to their disadvantage: I am speaking from memory; but it would be easy to ascertain, if greater accuracy is required.

1115. Lord *Elphinstone.*] Is it not the fact that the aggregate pay of the European soldier in India now, is more than he was strictly entitled to under the terms of his enlistment?

As far as I recollect, it was so in most cases before the corrections I have just mentioned were made: though much was written about it in the newspapers, I do not think that the soldiers, generally, knew upon which portions they received too much and on which too little; but they did know that there were discrepancies, some of which were to their disadvantage: there was one instance in which the men of a regiment when they were paid, said, "We will take whatever is given to us, but we decline to sign our acquittances."

1116. Did not this excitement happen also at an unfortunate moment; was it not in the beginning of the year 1842?

Yes.

1117. Marquess of *Tweeddale.*] Does the pay code of the army define all the allowances to which the troops are entitled?

Yes; this book which I have with me does so up to the date of its being issued; it is four years old.

1118. During the late embarkation of troops to Rangoon, did any Sepoy refuse to accompany his regiment?

I was in England when the present Burmese war broke out; but I have been in the habit of receiving communications from officers engaged in the war and at the Presidency; and my information is, that one man only of all the force was absent at the time of embarkation, and the reason of his absence was not known: it is remarkable that only one man declined to go during the former Burmese war. I have in my hand a letter from a Staff officer of Artillery, the Assistant Adjutant-general, who writes thus:—'The knowledge of the following circumstances may or may not be useful; but I think it well to communicate, that on the 25th of May, the orders of the Government for the organization of an additional karkhana for immediate embarkation to Burmah were received at the Artillery head quarters; that was made public at half-past one o'clock P. M. of that day, and within three hours the establishment of 49 men was complete: on the following day they were clothed, and the arrangements usual before embarkation were made, and on the 27th and 28th those men were all embarked on board the transports; so acceptable was the service, that three or four times the number required presented themselves for enlistment within three hours: the B. Company of Golundauze, within one month of their return to their families, after a separation of three years on foreign service at Malacca, volunteered their services for the expedition; and the A. Company, in the Northern Division, two years after a service of three years at Aden, offered themselves for the same service." Then he goes on to state, "The 11th Native Infantry, I have heard, returned from Moulmein in 1850, and volunteered; but of them and others I do not speak with authority."

1119. To what do you attribute their willingness to go on foreign service?
To their confidence in the very liberal provisions made by Government for them, and to the soldier-like feeling with which they are ready to follow their officers wherever they are required: the Sepoy also has a great attachment to his colours; it is a point of honour with him to follow them.

1120. Lord *Colchester.*] Was there a similar readiness shown in the expedition to China?
Yes; but there were the unfortunate circumstances to which I have referred.

1121. Lord *Elphinstone.*] In what spirits did the troops embark when they went to China?
I was present at the embarkation of the troops, and they went off in the best possible spirits. After the 2d and 41st Regiments were embarked, a report was brought, while I was sitting with the Commander-in-Chief, that there was still some misunderstanding about remitting money to their families. In consequence of this, the Commander-in-Chief approved of my going on board the ships at once to make inquiries. I visited them all, and I found that the report was entirely erroneous. In one ship I found a few men who had some ready money in their hands, which they asked me to take on shore, and send to their families; and I did so. When on board the different ships, I spoke to the men and the Native officers, and I found they were all in high spirits, and pleased with the service; and on leaving one of the transports, in which the present Lieutenant-colonel Campbell, C.B., of the 41st Regiment, was with his men, the Sepoys came to the gangway, and cheered me with their "Deen, deen," as I was shoving off in the boat. During that war, many Sepoys volunteered from other regiments to join those in China.

1122. Marquess of *Tweeddale.*] Did the men allege that they had been told that they were to return immediately the service was over?
Those that were kept in China were very much disappointed at being kept in garrison after the service was over, particularly the 41st Regiment.

1123. Did they give as the reason, that it had been promised to them that they should return immediately the service was over?
That is not in my memory specifically; but I can very well understand that that feeling did arise in their minds when they were kept beyond three years, and only for garrison duty.

1124. Lord *Elphinstone.*] How long were they kept?
I cannot now state the exact period.

1125. Were they very sickly at Chusan; did the regiments lose any men?
The 41st lost several; and the 4th suffered more than any other regiment.

1126. And several men were drowned on the passage to China?
There was a ship sent that was notoriously dangerous, and she foundered on the passage: Colonel Isack, with the flank companies and head quarters of the regiment, and many public followers, were on board.

1127. Viscount *Canning.*] When you say that the ship was notoriously unseaworthy, do you mean that it was known to be so before the troops embarked?
She was known to be a peculiarly crank ship; and it was currently said that a Captain had left her because she was a dangerous ship.

1128. Was that known to the Sepoys when they embarked in her?
No; and it was not known to the Madras Government; but after she had foundered, it was generally spoken of. I knew it then as a matter of common report.

Colonel Robert Alexander.

3d Dec. 1852.

1129. Lord *Colchester*.] Was she a merchant vessel taken up for the purpose of conveying the troops?

Yes; she was a merchant ship that had been much employed in the cotton trade from Bombay and Calcutta; she was taken up at Calcutta for the conveyance of the troops. Of late years, since steam has been introduced, regiments have been sent from Madras to the Northern Division by steam, and in three days the whole transport has been effected. In such a case there was no claim made for anything but their batta; but it was not considered foreign service, and the Audit Department would only give the Sepoys batta for the three days that they were on board ship, leaving them to bring their families 529 miles overland without anything to meet the expense. There was a good deal of correspondence upon the subject; and I understand that finally there has been an order from the Court of Directors, that troops embarked under such circumstances are to get batta according to the regulated distance from the point of embarkation to the point of disembarkation, which is a just and fair measure when they are sent to half-batta stations.

1130. Marquess of *Tweeddale*.] Have the feelings of the Sepoys been affected, or their suspicions been excited, by changes in the former systems of pay and advantages granted to them?

I have, I think, already answered that question; no doubt their confidence was shaken by the changes that were made. Formerly the Sepoy had that implicit confidence in the Government and his officers, that he did not think much about it; we have now taught him to think much more upon those points than he used to do.

1131. What is the influence of Native and non-commissioned officers whenever there is suspicion or dissatisfaction on such subjects?

The influence of the commissioned and non-commissioned officers is very great, and is often most beneficially exercised; whatever occurs, they know, nor can anything be agitated among the Sepoys without their being quite aware of it.

1132. Upon what system are the promotions of Native officers in Madras made?

The first step in a Sepoy's promotion is becoming a Lance Naique or Corporal. When the Sepoy is on probation for promotion to be Naique or Corporal, he is selected according to his merits; and the list of Lance Naiques is so formed as to give a fair share of promotion to the different castes and classes in the regiment. If the Lance Naique is found unfit for promotion to Naique, he is remanded to his duty as a private; if he is promoted to be a Naique, he succeeds by seniority, if his qualifications and merits are sufficient, to be a Havildar or Serjeant; in the same way, from Havildar he is promoted to Jemadar. If a Havildar, either from age or other circumstances, is not found fit for promotion, and is of good character, he is made a Colour or a Hospital Havildar, in each of which positions he gets an extra allowance, and in the former an honorary distinction, but he is passed over in promotion. The Jemadars are in the same way promoted by seniority, unless there are very strong disqualifying reasons, to Soubahdars. The Soubahdars are in three classes, which have a progressive increase of pay according to length of service; and from the Soubahdars is selected, for his merit, the Soubahdar-major, who has a brevet commission for that rank.

1133. Lord *Elphinstone*.] You said that the original promotion of Naiques was made partly with reference to caste; is it not the case that the majority of the Native officers in the Madras army are Mussulmen?

An undue proportion were so; that was carried to such an extent, that since 1839 it has been the most anxious care of the Commander-in-Chief to give every caste its fair proportion: the Mussulmen so greatly preponderated in both the commissioned and non-commissioned officers, that it was absolutely necessary gradually to bring in the Hindoos for their fair share of promotion.

1134. Are the Hindoos the majority of the Naiques?

Yes, I think they are so by this time; but there were some corps in which the majority of non-commissioned officers were Mussulmen, while the majority of privates were Hindoos.

Colonel *Robert Alexander.*

3d Dec. 1852.

1135. Marquess of *Tweeddale.*] What is the proportion of Hindoos and Mussulmen in the Madras army?

Speaking generally, I should suppose about three-sevenths are Mussulmen and four-sevenths Hindoos.

1136. Lord *Elphinstone.*] What led to the promotion of an undue proportion of Mussulmen?

The Mussulmen are generally the boldest and most energetic men, and, as a class, the best soldiers; but if that system had been allowed to go on, it must have had a very depressing effect upon the Hindoos, and they would have been completely discouraged by seeing that the promotions were so unequally given. The object of the Commander-in-Chief was, that there should be nothing to depress the military spirit of the Hindoos, many of whom are as high-spirited as the Mussulmen; there is great boldness, and often fierce courage, among the Mussulmen, whose religion makes them all fatalists.

1137. *Chairman.*] Are not the Hindoos fatalists?

Not all in the same degree: many Hindoos look upon death with the greatest unconcern; but I should say, that fatalism with them is not so active and stimulative a principle as with Mahomedans. The Soubahdar Majors held no priority in their regiments till recently, when the new Articles of War established, that the Soubahdar Major should preside at all regimental Courts-martial; that is contrary to the military principle, that a brevet commission does not give regimental precedence; a Soubahdar Major would preside at a general or district Court-martial in virtue of his brevet rank; but, in consequence of this order, he is obliged to preside even where his senior Soubahdar in the regiment may be a member of the regimental Court-martial.

1138. Did that order come out from England or from the Commander-in-Chief?

From the Supreme Government; it is embodied in the new Articles of War.

1139 Do the Native and European officers sit together upon the same Court-martial?

No.

1140. Is any sentence passed by Native officers without revision by Europeans?

The Native officers sit on Courts-martial precisely in the same way as European officers, and their sentences have exactly the same effect.

1141. Marquess of *Tweeddale.*] Will you state how a Native Court-martial is composed?

It is composed precisely in the same way as a European Court-martial, of Native officers with an interpreter, and a European officer to conduct the proceedings. At a regimental Court-martial the Adjutant conducts the proceedings, and the regimental interpreter interprets. In the case of a line, garrison or district Court-martial, an interpreter and an officer to conduct the proceedings are detailed; at general Courts-martial the Deputy Judge-Advocate-general conducts the proceedings, and they are forwarded to the Commander-in-Chief for confirmation in the same way as are those of the European general Courts-martial.

1142. The interpreter is a person who has passed in languages as an interpreter?

Yes.

1143. And the Adjutant has passed in languages?

Yes, to obtain staff appointment.

1144. Lord *Elphinstone.*] Do you prefer the system of promotion by selection, as it is in the Madras army, or that of promotion by seniority, as you are aware is the case in Bengal?

I do not think there is the slightest comparison between the two, even in the Madras army; when an officer gets rather aged, and at the top of his profession, it is difficult to keep up his energies. We often find that a remarkably smart Havildar gets less active when he becomes even a Jemadar, though we have a check upon and stimulant for him; there are many valuable men in the Native officers of the Madras army, who in a campaign, or on hard service,

Colonel
Robert Alexan

3d Dec. 185

would be competent to command their men, if all the European officers were killed or disabled.

1145. They are all looked up to in their regiments?

They are; and a good European officer of any regiment would do all in his power to cherish the military feelings and obtain the confidence of the Native officers.

1146. No jealously would be felt by the European officers of the influence and respectability of the Native officers?

There ought not to be. The Native officer is a very important connecting link between the Sepoy and the European officer. The European officer can refer to him for information upon all subjects, and ascertain from him the feelings of the men; he can explain anything that requires explanation to the Native officer, and, where the proper confidence exists, may feel assured that the Native officer will put it before the men in the best possible way.

1147. You do not think that that influence would ever be likely to be formidable to the State?

Whether Native officers are promoted by seniority or by selection, their influence, I think, will be the same; so long as they are faithful to the Government, their influence is in every way beneficial, and I know instances in which it has allayed the excitement in the Sepoys' minds. With proper treatment, I see no reason to doubt the permanence of the loyalty and fidelity of the Sepoy army, and of course, with it, of the Native officer.

1148. Earl of *Albemarle.*] Should you give the preference to appointments by seniority, or by selection?

By selection. I think you would damp the whole energies of our army, if the promotions were by seniority. I would state, as the result of my own experience, that if you appointed by seniority, the Native officers so appointed would be in as influential positions as officers selected, and, being old and less efficient men, they would be less able to resist pride, or control any popular feelings among the Sepoys. When the discussion arose about the batta in 1841, as soon as the alteration was known, and the regiments were ordered to move up to Hyderabad, there was a Jemadar of the Horse Artillery who went among his men, and assured them that every thing would come right at last, and, by the weight of his influence and high character, contributed essentially to keep the Sepoys steady and true. During the excitement that afterwards arose, those very men turned out to maintain loyalty and discipline against their own friends and relations in another corps. Of course it was my duty, in the position I held, to obtain the best information I could, and for that purpose I was in constant correspondence with both European and Native officers, and I know this fact from private information; the Jemadar died very shortly afterwards of the cholera.

1149. Lord *Elphinstone.*] Was he one of the officers who was recommended to the Government for a special mark of approbation?

I think he died on the march to Hyderabad, before the excitement broke out; but the men knew, before they left Bangalore, that the reduction of batta was to have effect. There was also an old pensioned Soubahdar, and other pensioners, who went much among the men at Hyderabad, using their influence and advice in the best spirit of loyalty and good feeling, and communicated valuable information as to the feeling of the men: their praiseworthy conduct in endeavouring to allay their excitement, was specially rewarded by the Court of Directors, as were also some Native officers and men who were serving in the ranks.

1150. At the time there was a Mahomedan preacher at Bhelore, who was constantly preaching disaffection to the Sepoys; is it not the fact, that some of the pensioned Native officers gave information to the Government of that circumstance?

Yes; there were several pensioners who gave information, and though they suffered very severely in consequence, the Government did nothing for them. I was informed that they could not get fire or water from the other Mussulmen. The Moulavee you allude to had immense influence at Vellore and in the surrounding country; he had many mooreeds, or followers, and he was reported to have openly preached disaffection against the Government.

Colonel *Robert Alexander.*

3d Dec 1852.

1151. Lord *Monteagle* of Brandon.] You have described the Native and the European Courts-martial. Speaking generally, is the administration of those judicial functions by Native Courts-martial satisfactory?

I think it is very satisfactory; the Native officers weigh the evidence extremely well, and they understand their own countrymen, and arrive at very good decisions.

1152. Taking into account the questionable nature of some classes of Oriental evidence, do you think that an intelligent and upright Native officer sitting on one of those Courts-martial, has a better means of discriminating between true and false evidence than a European officer would have under similar circumstances?

Certainly; the amount of false evidence given in many trials in India, is very great, and a Native would, in general, understand the nature of it in his own countrymen better than a European. I may mention that Native Courts-martial are conducted according to European laws of evidence.

1153. Earl of *Albemarle.*] Do you consider the efficiency of the Madras Native army to be equal now to what it was in former periods; take, for instance, Lord Clive's time, or Sir Arthur Wellesley's?

The Madras army has not of late years been much employed in warfare; but I think, if they were called into the field, a little accustomed to be under fire, and properly commanded, they would do as good service as was ever done under either Clive or Wellesley. I may mention, that to this day the only name by which his late Grace, the Duke of Wellington, is known to and venerated by the Sepoys, is General Wellesley.

1154. Marquess of *Tweeddale.*] What is the effect of a Sepoy being placed on Public Works by sentence of a Court-martial?

During the time that corporal punishment in the army was abolished, and when there was no other punishment for serious offences but hard labour in irons, it told most oppressively upon the Native army. A man involved the disgrace of his family by being sentenced to labour among felons, and suffered severely by the loss of his service in consequence of that sentence; men who were careless of character, were indifferent to the punishment, and were insubordinate in proportion; and while it was ruin to an old Sepoy, a young one, after the completion of his sentence, could go to a distant station, where he would be unknown, and there re-enlist.

1155. If men of the highest caste in the Madras Army have committed a military offence, and are sentenced to labour on the roads, does it not frequently happen that they are chained to low caste men?

Formerly that was so; by the new Articles of War they are relieved from that punishment, except for disgraceful conduct, and some extreme crimes.

1156. The natives have no feeling for any punishment, whether corporal or any other punishment, provided it does not touch their caste?

Not more than other men; the Sepoys themselves, and particularly the Native officers, were strongly averse to the abolition of corporal, with the substitution of such other kinds of punishment for it. I recollect a fine old Soubahdar in my regiment saying to me when those orders first came out, "Take care what you are about, sir; for if you do not, the men will neither love nor fear you."

1157. A high caste man does not care for being flogged under a military sentence?

A high caste man would, of course, feel the disgrace of being flogged; but he would bear it as a soldier, and, as compared with the degradation of being sent to work on the roads in irons, you may say that he would feel it lightly; but, with good discipline, I can hardly imagine the necessity of flogging a high or low caste man of decent character. There is, I think, no army in the world in which punishment need be less resorted to than in the Madras Army, in which the abolition of corporal, and substitution of other punishments, worked so badly.

1158. Lord *Elphinstone.*] Flogging in the army has been restored?

Yes; by new Articles of War it has been restored.

1159. Viscount *Canning.*] After a Sepoy has been sentenced to imprisonment and hard labour, what becomes of him?

He is dismissed the service; a man who has been classed with felons, is not to be received back again into the service.

1160. Is he discharged from the army in consequence of the feelings of his comrades towards him?

The object was, I presume, to maintain a high military feeling, by the removal from the army of men who have been classed with felons; if we had men who to-day were associated with felons, and to-morrow come back into the army, it would sink the whole character of the service.

1161. Then it is not the disgrace of being found guilty of the offence, but the being classed with felons, that operates upon the minds of the Sepoys?

Exactly.

1162. A Sepoy might sometimes be sentenced to imprisonment with hard labour for an offence coming short of felony?

Yes; in those days there was no other punishment but imprisonment with hard labour for anything like a serious offence, and it was often a painful duty to sentence a man to imprisonment and hard labour because there was no alternative.

1163. And though the offence that had been committed might be something very short of felony, yet the party who had been sentenced to imprisonment with hard labour would be considered henceforward as in the same class of felons?

Exactly: in the case of a Native of high caste, he may not feel, or his caste people may not feel, that there is any moral turpitude in the act that has been committed, but the punishment to which he has been subjected causes him to lose caste. I remember public notice being taken of the case of a wealthy man in Calcutta having been condemned to transportation for forgery; and when he returned to Calcutta, there was no demur made by his caste to the moral guilt he had incurred; but he was out of caste, because he had cooked in unclean places: that I give as a specimen of the feeling that exists.

1164. Lord *Elphinstone.*] Would a man be obliged to leave the regiment after he had been flogged?

No; unless he had been condemned for "disgraceful conduct."

1165. But he would be obliged to leave it after he had been condemned to hard labour in irons?

Yes.

1166. Earl of *Albemarle.*] Has the question of the substitution of secondary punishment for flogging been considered in India?

We have a scale of secondary punishments for light offences.

1167. Marquess of *Tweeddale.*] Has it been the custom from time immemorial in India to punish the soldiers by flogging?

Yes; and if you refer to the records of the army in Sir Eyre Coote's time, you will find sentences, not only of extremely severe floggings, but of men to have their ears cut off.

1168. Under the Native Princes was not flogging practised on the soldiers in the Native armies?

Not as we practise it; under Native powers punishments would be arbitrary; and it must have been in such a spirit that Native officers passed such sentences in Sir Eyre Coote's time, which I need hardly say were not confirmed by the Commander-in-Chief.

1169. Viscount *Canning.*] Were those sentences passed for offences which would, under the present system, be punished by flogging?

My memory is not accurate enough to enable me to state; it is a thing which I have read of in my official capacity; as far as I remember, they were offences in the field. I remember one extremely severe sentence upon a man for having slept on his post.

1170. Marquess of *Tweeddale.*] How does what is called good-conduct pay operate in the army?

As an incentive to good conduct, it operates scarcely at all: a year before the Sepoy is entitled to good-conduct pay, if his health fails him, he is entitled to a pension of four rupees a month; during the first 14 years of his service, which is the time at which he is most likely to run wild, it has not the slightest influence

Colonel
rt Alexander.
——
Dec. 1852.

upon him; and after that time, if he keeps clear of a Court-martial, he has a claim to what is called good-conduct pay, but which, in reality, is rather long-service pay.

1171. Earl of *Albemarle.*] What would you suggest as a remedy?
Giving good-conduct pay, as is done in Her Majesty's service, and in the Company's European Corps for shorter portions of service, 5, 10, 15 and 20 years' service.

1172. Lord *Elphinstone.*] Do the Sepoys attach much value to the orders of India?
They value them; but I do not think it is so congenial to the Native mind as the old system of bestowing shotriums, swords, palanquin and other allowances. The orders of India are limited in number, and the parties receiving them disappear from the ranks of the army. I have here an Army List of 1850; out of 34 Soubahdars who have the highest order of Sirdar Bahadoor, 22 are on the Pension Establishment; and, as regards the second class, or the Bahadoors, there are 23 out of 33 of those also pensioned; so that the order is hardly in the ranks of the army, instead of being constantly before the eyes of the Sepoys: the order of Merit is for distinguished service in the field, and that is a noble institution.

1173. Are there many officers who receive that order?
I believe that in the Madras army some non-commissioned officers and Sepoys only have obtained it; I do not think any Native officers have it.

1174. Do not the Sepoys value grants of villages or jaghires?
They like very much the grant of a shotrium; the Native looks much to a provision for his family; anything which provides for his family is most acceptable to him.

1175. *Chairman.*] Is the reward of a village or a jaghire frequently given?
No, it is no longer given; the order of India and the order of Merit were given as a compensation for all such grants; the grant of shotrium and of palanquin allowances, or any of those other grants which were formerly made, are no longer held out to the men.

1176. From what fund was the grant of a jaghire made?
From the land revenues; it was an assignment on the revenues of a certain district.

1177. Would that give the parties any right over the Ryots?
Within the Company's territories it would not; there would be the civil authority to check them; but under a Native government any grant of that sort would give them great power, such as is not recognized in the Company's territories.

1178. Lord *Elphinstone.*] Were not those grants in accordance with the practice of the ancient governments?
I am not certain, but think they are not more ancient than the Mahomedan institutions.

1179. The palanquin allowance and the Nobut?
Yes; but the Nobut given to Native officers never answered, for you could not raise the men to whom it was granted to the same position as one of the highest Native nobles, to whom only such a dignity was accorded by Native Sovereigns; our Native officers had not the wealth or prestige of the Native nobility; the dignity of the Nobut entitles to the privilege of beating drums at the gate of the palace of a Native Sovereign or nobleman; and when the Government conferred this honour upon a Native officer living in an ordinary house, with perhaps a couple or 300 rupees a month, neither the Nabob of Arcot nor any Native nobleman would recognize him as equal in rank, or to be classed with themselves; the Nobut in such circumstances had not the same dignity in the eyes of the people.

1180. *Chairman.*] Do many of the ancient nobility come into the army?
Such nobility is not hereditary; it does not go by descent, as among us; but several Mussulmen and others of good families now impoverished come into the army, particularly into the Cavalry and Artillery.

1181. Marquess

Colonel Robert Alexander.

3d Dec. 1852.

1181. Marquess of *Tweeddale.*] What is the system of pension of the Native troops?

After 15 years' service, the Sepoy, if his health fails him, and he is pronounced unfit for service, is pensioned on four rupees a month; Havildars and Naiques also receive, after the same length of service, pensions proportionate to their ranks. The Native officers and men who are pronounced unfit for service, are either pensioned or invalided, that is, transferred to veteran battalions, after 15 years' service. The Soubahdar now gets 25 rupees a month; formerly he had much more.

1182. Lord *Elphinstone.*] How much more?

Under 40 years' service, a first-class Soubahdar in the Cavalry got 59 rupees, and in the Infantry 35 rupees a month. The pensions of Jemadars are now only 12 rupees a month.

1183. *Chairman.*] You make use of the word "formerly"; how far back do you go?

I mean before 1837. After 40 years' service, Soubahdars now get 40 rupees, and Jemadars 20 rupees a month.

1184. Marquess of *Tweeddale.*] Has the system been altered of late years, and, if so, is it for the better or worse?

The greater ease with which a Sepoy can obtain a pension now than formerly is a great advantage to him; but I think it is a serious detriment to the interests of the service, and a heavy expense to the Government. The Native officers are worse off now.

1185. *Chairman.*] How is it easier for the Sepoys to obtain pensions now than formerly?

Formerly, in the Madras army, a Sepoy was not allowed to count service till he was 18 years of age; he had to serve 20 years before he was entitled to a pension, and if found unfit for service then, he had a pension of 3 rupees 8 annas a month. By the new system, introduced under orders from the Supreme Government, the Sepoy can count service from 16 years of age, and he is eligible for a pension of 4 rupees a month after 15 years' service, when only 31 years of age; the consequence is, that there is a very powerful inducement for a man to get out of the service if he is of a weakly constitution, or a successful malingerer, and then he is thrown upon the Government, who have to pay him 4 rupees a month for life. Formerly a man was not eligible to pension for long service, and being worn out, under 38 years of age.

1186. Lord *Colchester.*] Is the Sepoy worn out at the age of 31?

No; most of them would be in their prime at that age. It was, I think, unwise to allow them to count service from the age of 16. If you take men who were enlisted at 16 years of age, or before they have gained strength, you will often see them drawn down on the left side by the weight of the musket. It would, I think, have been much better not to have counted service till 18 years of age.

1187. *Chairman.*] Who determines at what age the recruit shall be taken?

The Commanding Officer recruits for his own regiment; but there is an establishment for orphans, and if a lad in that establishment, of the age of 16, appears to be a stout lad, the Commanding Officer is anxious to enlist him, in order to increase his means of living, and to provide for another orphan. There is always a kind feeling on the part of officers to take the sons of good men and orphans, as soon as by regulation they are eligible for the service.

1188. But still the disposition of the Commanding Officer would be to get the finest men he could get for his regiment?

Certainly; if it was a mere question of whether he should take a boy of 16 or a youth of 18, he would take the latter.

1189. Marquess of *Tweeddale.*] Are the rewards held out for distinguished services or good conduct effectual?

They are certainly prized; but I think they are too much limited by their small numbers. I may show the effect of that limitation by an example: on the return of the troops from China, a Native officer, who had distinguished himself very much, was recommended strongly to the Commander-in-Chief to be made

Colonel Robert Alexander.

3d Dec. 1852.

made a Bahadoor; but the Commander-in-Chief has in the Adjutant-general's office a record of every Native officer's services, and every claim that they have to the distinction. With this Native officer who had distinguished himself in China, came in the regular course of selection another officer of the name of Mahomed Shalley, of the 20th Regiment of Native Infantry, who had fought in the battles of Assaye and Argaum, and been through both the Mahratta campaigns; and the question arose whether the reward should be given to the officer who had distinguished himself in China, or to the old veteran who had seen so much service in former wars. Had not the number of these distinctions been limited, both officers might have been taken; but being limited, the Native officer who had served in China had to wait, and the other received the order of India. Something similar occurred in the case of a Native officer of Sappers and Miners, who distinguished himself under Sir C. Napier in Scinde.

1190. What influences are there among the non-military classes of Natives by which the feelings of the Sepoys may be excited on the subject of pay, pensions and allowances?

There is a very large population connected with the Sepoys, and dependent upon their means of subsistence; whatever, therefore, affects the Sepoys, immediately touches the interests of thousands of people around them, and influences their feelings towards the Government.

1191. And those persons excite the Sepoys?

They have as much interest in the Sepoy's pay as the Sepoy himself; they act upon each other.

1192. In the changes which have been made of late years, has the necessity of effecting a reduction of expenditure been of sufficient weight to prove that it was advisable to risk a shock being given to the confidence felt by the Native army in the permanency of their terms of service and enlistment?

In regard to some of the alterations that have been made of late years, they have not been reductions of expense to the Government; as regards pensions, it would be a matter of calculation whether the alteration in the pension establishment will not involve a much heavier expense to the Government than would have been incurred by putting the armies of other Presidencies on the Madras rates of batta, which were only granted in full on foreign or field service and on service beyond the frontier of the Company's country; take, for instance, Hyderabad, and I believe that it will be found that almost ever since batta was taken away, and the increased rate of compensation for rice allowed, the Sepoy has received more than when in receipt of full batta; the same applies at Nagpore, and with the troops serving beyond the Nerbuddha, where, at one time, the increased expense was represented to be considerably more than a lac of rupees a year. Again, when the batta was reduced in 1841, the rate of exchange for the troops was established at 121 Hyderabad rupees for 100 Madras rupees. Now, I believe, that though it might be possible to find in that country a rupee that might assay to that difference of value, yet there is none such current, and the proper difference would have been about 15 or 15½ per cent.; taking the common currency at Hyderabad, which is the Bagh Chulnee rupee, the Government has incurred a loss there of about 5½ per cent. on the whole of their payments to their troops since 1841, while up to that period they had been paying them at the rate of about 4½ per cent. too little.

1193. Lord *Elphinstone.*] Therefore, that measure of supposed reduction, which caused so much discontent among the Native troops, has actually led to an increase of expense to the State?

Certainly, in some instances, and most so at Hyderabad and in the Saugur territories; it also involves another anomaly, viz., that the troops in receipt of compensation for rice in garrison, receive less money when they get batta to defray their increased expenses in the field.

1194. Marquess of *Tweeddale.*] Are the pay and allowances sufficient?

I do not think the marching batta is sufficient; it is 1 rupee 8 annas a month to a Sepoy, or in English money about 3*s.*; the rate of march of troops from station to station, not on active service, is nine miles a day; taking that for a month of 31 days, it amounts to 279 miles a month, and the Sepoy has to pay all his marching expenses for this time and distance from an additional allowance of

Colonel
Robert Alexan

3d Dec. 185

of a small fraction above 1*d.* a day. Their hutting allowance is another which I do not think sufficient; the Sepoys' pay is 7 rupees a month, and that of the non-commissioned officers was increased in 1837; but I certainly think that it is necessary to look prospectively to doing more for the Native officers, and to find some means of employment or better provision for them out of the service; something that will give them more than the present rate of pension, and keep them on a fair relative footing with the advancing interests of their countrymen in civil life.

1195. Lord *Elphinstone.*] Are not they generally too old to begin a new career after that length of service?

They are, unless employment could be given to them in superintending situations in a police force. I think the present rate of pension of 25 rupees to a Soubahdar, and particularly to the Cavalry officers, who are frequently men of good family, and burthened with many dependents, is insufficient, and that something more should be done, such as giving them charges or employment that should be honorary and moderately remunerative.

1196. Viscount *Canning.*] Has any branch of employment suggested itself to you?

The difficulty is, that the officers cling so long to the service; but if there was an efficiently organized police, a good number of them might be provided for in that way.

1197. You mean by police, military police?

I mean a police similar to the police in England, or the gens d'armeries.

1198. *Chairman.*] It has appeared in evidence before this Committee, that a great number of pensioners are not natives of the country to which the army belongs; and it has been stated also, that considerable advantage arose from that circumstance. Do you agree in that opinion?

With us that is an exception; our army is raised, and the greater part of the pensioners live, in our own provinces; the others are Hindostanees, and those men when pensioned return, of course, to their own country, but there are but comparatively a few of them.

1199. Then the observation does not apply to your army?

No.

1200. Marquess of *Tweeddale.*] What is the strength of the Madras army?

There are about 60,000 men.

1201. How many foreigners are there among the 60,000?

Off-hand, I should say that there would not be more than perhaps 1,000 or 1,500; but I have no memoranda on the subject to refer to.

1202. What arrangements are made in the military cantonments to control the sale of spirits and intoxicating drugs to the military classes?

There exists what is called the "Abkarry contract system," which is, that a person buys from the Commissariat Department a monopoly of the sale of spirits and intoxicating drugs in the military cantonments.

1203. *Chairman.*] Is that person a Native?

He is a Native; there is no reason why he should not be a European; but I never knew a European hold the contract, except at Bellary. The object of this person therefore is, to indemnify himself for the large sum he has to give for this monopoly by the sale of what demoralises the European and Native soldiers, and all the inhabitants of the cantonment. The police jurisdiction, which, by the regulations, should be a check upon this sale of spirits and intoxicating drugs, is in the hands of the same authority, which is expected to realise the largest amount from the sale of the monopoly. The consequence is, that while there are regulations for the legal sale, there is an illegal one carried on, which has been strongly represented on several occasions by the Commanding Officers of regiments to the Commander-in-Chief, and which they cannot check. The Medical Board has also remonstrated against the Abkaree contract, on account of its ill effects upon the health of the troops.

1204. Lord *Elphinstone.*] If there was no monopoly, but everybody was at liberty to sell spirits in the cantonments, do you suppose that a less quantity would be consumed than at present?

Colonel Robert Alexander.

3d Dec. 1852.

Much less. Supposing that there were no monopoly, but that the sale of spirits was allowed only by licenses, those licenses could be granted upon conditions that would give a sufficient check to the sale. You have now a capitalist paying a large sum to the Government for the monopoly; and I have no hesitation in saying, that the police authority, which ought to check the monopolist's illegal sale, does not check it, and that is the bane of all the military classes in our Presidency.

1205. As the party pays a large sum for his monopoly, is he not obliged to increase the price of his spirits in order to realise a profit?

Yes, he would be, unless by the sale of larger quantities he can realise a profitable return for his money on a lower price.

1206. If anybody who was licensed might sell spirits, would not the price of spirits be lowered?

It might be advisable to levy an excise duty, perhaps. In a memorandum I have here, I find that in the year 1837-38 there was at Bangalore paid 96,500 rupees, for the monopoly of the sale of spirits to the military.

1207. That is over and above the excise or other duty?

The abkaree contractor has to distil his spirits, to keep up his shops, and pay the attendants, to pay an establishment of peons, and every incidental expense, in addition to this payment to the Government, and he must be reimbursed by the drinking habits of the military classes.

1208. Lord *Wodehouse.*] May not his profit be made by the higher price he compels the parties to pay for the spirits?

But he must keep the price within the means of the men. At Secunderabad a man paid 64,864 rupees for the monopoly. At Kamptee, where the force appeared to have been reduced, 44,114 rupees; at Jaulnah, which is a small station, 19,025 rupees; at Trichinopoly, 34,010 rupees; but wherever the contractor or monopolist will not give a sufficient sum, then the Government distils on its own account, and sells to the soldiery. At the time referred to, I find that at Trichinopoly it was managed by the Government servants, so that the same officials who had to check the drunkenness of the soldiers had to manufacture and sell to them the means of getting drunk.

1209. Viscount *Canning.*] In your view, the principal vice of the arrangement is, that the police, who ought to be the guardians of order and sobriety, have an interest in a large consumption of spirits?

Yes; the police have an understanding with the contractor, and it is by the illicit sale, contrary to the Regulations, that he gets his large profits.

1210. In what manner does the law restrict the sale?

The law regulates the circumstances under which spirits may be sold; they are not allowed to sell to Europeans at all. It might appear to any persons who read the Regulations, that they were sufficient, but in practice they are not so.

1211. Lord *Elphinstone.*] The reason they are insufficient is, that the contractor bribes the police?

Yes; or what amounts to the same thing, there is a mutual interest between him and the Native officials; if it were not so, he could not hold the contract at the high rates now given. At Cannanore the man paid 29,193 rupees; at Masulipatam, 28,007 rupees; at Vellore, 25,512 rupees, and at Arcot, 13,500 rupees; therefore, in those stations, which do not embrace the whole of the army, but were taken as specimens, the total amount paid to the Government for the monopoly of the sale of spirits and intoxicating drugs to the soldiery, was 3 lacs and 54,725 rupees for one year.

1212. Lord *Ashburton.*] What remedy would you suggest?

I am not saying that you could prevent the sale of spirits altogether, for to attempt it would only stimulate smuggling; instead, however, of throwing it into the hands of a large capitalist and monopolist, perhaps a better way would be to grant licenses to parties for the sale of spirits, under such restrictions are now imposed upon the monopolist. If you had a number of men licen one might be made a check upon another. One of the privileges of the monop is, that if he can find anybody selling spirits contrary to his contract, they are confiscated for his benefit. I may mention, that this subject has been gone into

by

Colonel
Robert Alexander

3d Dec. 1852.

by the Commander-in-Chief of the Madras Army, in answer to a Minute of the Government, of which copies may be obtained now from the East India House. The Minute of Council is No. 2,403, dated the 20th June 1840. The answer to that Minute of Council is a letter from the Adjutant-general of the Madras army, No. 809, dated the 5th of October 1840. Connected with those, there are the reports and opinions of the Brigadier Commandant of Artillery, and the officers commanding European regiments, deprecating the system of abkarry contracts, and bringing forward facts in proof of the evils that exist. I would particularly mention a letter from the Adjutant-general of the Madras Army, No. 292, dated 25 March 1843, forwarding to Government a correspondence with Lieutenant-colonel Milner, Her Majesty's 94th Regiment, with the Commander-in-Chief's sentiments thereon.

1213. Marquess of *Tweeddale.*] The effect of this system of collecting revenue for the State by the grant of these monopolies, is to injure the moral character of the troops?

Decidedly; and every Commander-in-Chief, and every officer commanding a regiment, either of Europeans or of Natives, deprecates the abkarry contracts.

1214. How does it affect the European troops?

By encouraging drunkenness, and that of the worst kind. In the papers which I have referred to, if called for from the India House, you will see a detailed statement of the effects, and if you could estimate the expense of crime and its consequences, I am sure it would turn out that those large sums which are raised by granting monopolies for the sale of spirits, were over and over again lost by the expense incurred in imprisonments, transportations, hospital treatment and deaths of European soldiers, the consequence of drunkenness.

1215. Lord *Elphinstone.*] If the police in the military cantonments were placed under civil officers and not under Commissariat officers, do not you suppose that the effect would be to prevent the sale of spirits, if the sale was restricted, as at present, to a single contractor, instead of its being allowed to any person who chose to set up a shop?

If your Lordship will separate the police authority from the authority that makes the contract, it will be of less importance whether you have it under one man or under many men; but let the magisterial authority be an effectual check upon the sale of spirits, and I have no hesitation in saying that the consequence will be, that morality will be improved, and the abkarry contracts proportionally diminished in value.

1216. In every station is the head of the police also a Commissariat officer?

Yes; wherever there is a Commissariat officer, he is in charge of the police; nominally the officer commanding is the head of the police, but all its power and influence is in the hands of the Commissariat.

1217. *Chairman.*] Are the Natives much addicted to spirit-drinking?

It is fast increasing among them, in consequence of this very thing.

1218. Lord *Elphinstone.*] But drunkenness among the European soldiers has diminished?

Yes, the moral character of the soldiers is very much improved, but what drunkenness is going on is principally in consequence of this system; and the way in which it operates is horrible. If a strong powerful European gets riotous, the arrack-sellers will drug the spirits, and he is reduced to a state of insensibility; *delirium tremens* follows, and often death.

1219. *Chairman.*] What drugs do they use?

Chillies, opium, stramonium, bhang, and others.

1220. Are intoxicating drugs much used by the Natives?

Opium and bhang are used, and drunkenness seems to be on the increase: as the abkaree contractor's profits cannot be realised unless he stimulates the vice, the drunkenness of the military community and the profits of the contractor are commensurate.

1221. Lord *Elphinstone.*] Do you know whether the sums realised by the sale of abkaree contracts are greater now than they were in former years?

I know no other prices paid for contracts than those I have mentioned, for every Native regiment that comes into a cantonment, I think, that 600 rupees

Colonel Robert Alexander.

3d Dec. 1852.

a month additional is paid by the contractor, and for every European regiment a much larger sum; and that as the civil population of a cantonment increases, the abkarry contractor has to pay more for his monopoly.

1222. *Chairman.*] Does the intoxication of the Natives take place mostly with spirits or with drugs?

Spirit-drinking is very fast spreading among the natives; I know this, not only from official data, but from information I have received from gentlemen in the civil service, and from missionaries, who say that it is much on the increase with the Native population generally: in the year 1843 there were 311 Courts-martial in the Madras Army on charges of drunkenness; in 1844, 315; in 1845, 304; in 1846, 310, and in 1847, 357; but this includes two regiments of European Infantry and four battalions of Artillery.

1223. Is it carried on more with drugs or with spirits?

With spirits, I should think; though some classes of Natives make free use of intoxicating drugs.

1224. Lord *Elphinstone.*] The Natives are not addicted to drunkenness, except they come into military cantonments?

You will find, as you approach a military cantonment or European society, drunkenness increase; you may in some degree tell your approach by that circumstance; in every village you will see the abkaree contractor's shop, and often, perhaps, the only conspicuous European article will be the square gin-bottle in its window.

1225. Marquess of *Tweeddale.*] Have you been in the habit of bringing this subject before the notice of the Commander-in-Chief?

Yes, very frequently before different Commanders-in-Chief.

1226. Has it been remedied in any way?

No; the Commander-in-Chief has received reports and representations from officers commanding regiments, and he has made his representation to the Government, but the system remains as it was.

1227. Lord *Elphinstone.*] Has not the sale of beer, which is furnished now by the Company at its cost price at the different stations where European troops are quartered, contributed very much to check the vice of drunkenness?

Very much; it has been attended with very beneficial consequences, both to the health and conduct of the troops. The beer is furnished on a most liberal scale by the Court of Directors, and the expenses of carriage so equalized that the soldier can drink excellent beer, nearly, if not quite, as cheap as in England.

1228. Either at Nagpore or at Hyderabad?

Yes.

1229. Marquess of *Tweeddale.*] Did you in your official capacity give your attention to the barrack accommodation of the European soldiery in the Madras Presidency?

I did.

1230. Will you describe, generally, what your view upon the subject is?

I necessarily had, in the course of my duties, to give my attention to these subjects; the old system of barrack accommodation, in which the men generally lived, in low barracks built in squares, was very far inferior to what is now known as the Bengal system of barrack accommodation, in which separate barracks are built for each company; they are high roomy buildings, with verandahs round them; and, under a recent Regulation, are supplied with punkahs and wet tatties for the hot weather; everything that goes under the name of "barrack supplies" are furnished on a most liberal scale, and with the exception of the provision for married men, there is, perhaps, little or nothing to be desired in the barrack accommodation of European soldiers under the new system, if more men are not put in the buildings than they were originally calculated to hold.

1231. Lord *Elphinstone.*] Do you happen to know what the height of the rooms is?

I think they are about 18 feet, not less; but I do not remember dimensions.

1232. Marquess

1232. Marquess of *Tweeddale.*] Are you aware whether the same objectionable system in regard to the women and families, as that in the garrison barrack in Fort St. George, till lately altered, obtains in barracks constructed on the Bengal standard plan, which has recently been made applicable to Madras?

When I left India, there had been orders issued for one range of barracks to be built according to the Bengal plan, to accommodate the families of a regiment; the system established in the Madras Army, for so long a time as I have any knowledge of its records, is that the European married soldier lived in what is called a parcherry, where he has a cottage for himself and his family, distinct from the barracks.

1233. *Chairman.*] What is the limit as to the number of wives in a regiment allowed to go to India?

In the Company's service it has only lately been restricted; formerly it was allowed at the commanding officer's discretion. I may mention, in answer to a former question, that at Fort St. George, they have now a separate accommodation for the families of soldiers, which they had not before; it was granted only lately.

1234. Marquess of *Tweeddale.*] Will you explain what those parcherries are, which are given to the families in Fort St. George?

In Fort St. George, there being no ground available for them to build upon, the Governor of Madras, who is governor of and commands in the Fort, ordered that an old gun shed should be given up for that purpose, and it was granted as an accommodation for the families, so that they live out of the barracks.

1235. How many married soldiers have apartments in that space?

I do not recollect the number but when I was ordered by the Commander in-Chief to visit and report upon it to him, it was full, and both men and women were grateful for the consideration that had been shown for their comfort.

1236. Marquess of *Tweeddale.*] Did it come within your knowledge, that when new barracks were required to be constructed at Bellary, about 1844, Colonel Sim, then Chief Engineer at Madras, proposed a plan, and also a modified plan, for the better accommodation of the married soldiers and their families?

I do not remember whether I saw Colonel Sim's plan, but think that most probably I did. I am aware that he did submit a plan of locating the families in a parcherry, and also another plan of having a separate barrack for them, and that under orders from Bengal, a separate barrack was ordered to be built for the families to live in.

1237. Lord *Elphinstone.*] The parcherry was disallowed?

It was.

1238. Marquess of *Tweeddale.*] Can you state the objections which caused the plan to be rejected after it was unanimously approved by the commanding officers of both services, and it was recommended to the Government that it should be carried out?

The objection was stated in an extract from the Minutes of Consultation sent from the Government to the Commander-in Chief, stating that it was inexpedient to allow the parcherry system, on account of the depraved habits of the soldiers' wives; that it afforded them opportunities for indulging in vice and selling spirits, and that such a system was not allowed in other colonies where Her Majesty's troops were stationed. To the best of my recollection, though these are not the precise words, that was the reason given against the parcherry system.

1239. Will you be good enough to state what, from your experience, your opinion is of the parcherry system?

I would state my own opinion, which I know to be also the opinion of very experienced commanding officers, that nothing can be more ruinous to the delicacy of a woman's character, or destructive of her family comfort, than life in barracks. In a parcherry, every soldier has his cottage in which he can keep his wife and children as domestic and secluded as in a village in England. In a barrack nothing separates them at any time from those living under the same roof, but a cloth or canvass screen. The women have to dress and to pass continually under the observation of men, and in a warm climate like that of India, *Colonel Robert Alexander*

3d Dec. 1852.

the men are constantly going about almost naked among the women. There is a promiscuous intercourse of persons of all characters, and no separation for the children, but they are exposed to all the licentiousness of a barrack life, and to hear whatever may be the language of the soldiers. There is little or no comfort in sickness to a family living in barracks; a crying child is an annoyance to every one near it; and the soldiers sleeping in the cots on each side of it, may be warned for duty in the morning. What women must endure living under every exposure to observation and remark, is destructive of modesty and delicacy; and a barrack life does not afford respectable parents the opportunity of bringing up their children in the way they may wish.

1240. *Chairman.*] Do not the same evils exist in the case of the families of soldiers in England?

I only know, from my own observation, one barrack in England, and that is at Woolwich, where I saw that there are separate buildings for the married men.

1241. Marquess of *Tweeddale.*] Do you remember the ground stated when the objection was sent from the Supreme Government?

I have already quoted from memory the grounds stated in the Minutes of Council.

1242. One of the principal grounds was, that the parcherry system was contrary to the system in the colonial service of Her Majesty?

The objection made was, that the same system was not adopted in other colonies where Her Majesty's troops were located.

1243. You are aware that the system of parcherry has obtained, for a great number of years, in the garrison at Woolwich, for the wives of the Artillery?

I do not know how long; but since I have been in England, on visiting Woolwich, an Artillery officer pointed out to me that the separate buildings that I saw, were the residences of the married men; that is all that I know on the subject.

1244. With reference to the service in India of soldiers in Her Majesty's and the Honourable Company's services, are you of opinion that the limitation as to marriages in Her Majesty's service is quite applicable to that of the Company?

In Her Majesty's service there are reasons for the limitation of marriages, which do not hold with reference to the East India Company's service. The soldier in Her Majesty's service looks to the return of his regiment to England, and if he pleases, he may accompany it, or if his health fails him, he may return as an invalid, and he need never consider his residence in India as permanent or for life, as the soldier in the East India Company's service almost necessarily must do. The soldier in the East India Company's service begins his service in the full vigour of his life; he goes through it with all the passions of his manhood, and he will either marry and have a legitimate family, or he may too probably leave to almost certain ultimate destitution a native illegitimate family. I fear that the substitution for a well-ordered parcherry will be the multiplication of brothels in the vicinities of barracks. I have data to show that moral conduct and good discipline prevail much more with married men in the East India Company's service than with unmarried; that there is less crime and less sickness.

1245. Are there not sanitarium barracks in the Madras Presidency?

On a small scale; they were tried first on the Neilgherry Hills, where the experiment failed, as I think, for want of proper management.

1246. Lord *Elphinstone.*] There was no barrack for the regiment?

No.

1247. Marquess of *Tweeddale.*] Are they not building one now?

Yes; near Bellary they built a temporary hospital for Europeans, which was found to be a very great benefit; it was built about the year 1847. Instead of marching the troops from Bellary when they were sick during the hot weather, which was very dangerous and inconvenient, they sent them up to a fine climate, at a short distance from the station.

Colonel Robert Alexander.

3d Dec. 1852.

1248. You state that there is a great inconvenience in marching the troops from a distant station to a sanitary station?

The only so-called sanitary stations are Poonamallee for Her Majesty's troops, and St. Thomas's Mount, near Madras, for the Company's troops; and to reach those points, the sick soldiers have to march, from Kamptee, for example, 700 miles; from Hyderabad, about 400 miles; from Trichinopoly, about 200 miles; and from Bangalore, about 200 miles; from Bellary, about 270 miles; but near Bellary very lately, a temporary hospital was erected for the European troops of that station; it was upon some hills in the neighbourhood, and it was found effectually to promote their recovery, and to save them from a long and distressing march.

1249. Lord *Elphinstone.*] What advantage did the soldiers get when they were removed to Poonamallee, which was 700 miles from Nagpore?

No advantage but the sea breezes occasionally, and change of air and scene.

1250. But is not Poonamallee inland?

Yes, about 12 miles, but still they felt something of the sea breeze. Latterly a hospital was also established at Tranquebar, for the troops at Trichinopoly.

1251. Marquess of *Tweeddale.*] Why was the sanitarium which was established on the Neilgherry Hills discontinued?

The first sanitarium on the hills for soldiers was near Koonoor. I do not know why it was discontinued, but I believe it was for want of sufficient disciplinary management to keep the men in order.

1252. It was not a station for a whole regiment?

No, only for a few men.

1253. Can you state whether barracks or hospitals could be built on the hills near the different stations in the Madras Presidency, without inconveniencing those who were sick, by marching them the long distance you have described to Poonamallee?

I have no doubt they might and I am aware that the Commander-in-Chief recommended that this should be done when he forwarded, in the year 1847 or 1848, the Sanitary Report sent in by the Medical Board to the Government, for transmission to the Court of Directors. In many parts of India such spots might be found: in the Nagpore territory, for example, there are hills which I should say, from my own recollection, and from information that I received when in that part of the country, would afford a good sanitarium for Europeans in the hottest weather; the hills are called the Putchmuree Hills. The experiment has, as I said before, been tried in the Soondoor Valley, on the Anamullee Hills, near Bellary.

1254. Lord *Elphinstone.*] Do you happen to know what the height of the Soondoor Station is above the level of the sea?

I should think about or above the height of the Mysore country generally.

1255. About 7,000 feet?

Yes, probably.

1256. Marquess of *Tweeddale.*] It has been proved to be a good sanitarium?

Yes; but there were difficulties raised about the ground by the civil authorities.

1257. *Chairman.*] What were the objections raised by the civil authorities to the occupation of the ground?

I cannot state them from my own knowledge.

1258. In your opinion, what were they?

I should prefer stating the fact, without stating opinion.

1259. Lord *Colchester.*] Did the civil authorities require the ground themselves?

Not that I am aware of. It was on account of the Rajah or Zemindar that the objection was made.

1260. Marquess of *Tweeddale.*] What has been the effect of the soldiers' marriages upon the discipline and efficiency of the men?

I have here a memorandum, drawn up by a Field Officer of the Madras Fusileers.

Colonel Robert Alexander.

3d Dec. 1852.

Fusileers. The aggregate strength of the regiment for the years 1849, 1850 and 1851, was 3,136 men; during that period the Courts-martial on single men, whose aggregate strength was 2,596, were nine general Courts-martial, by which, among other punishments, three men were sentenced to transportation. There were also 47 district Courts-martial, and 171 regimental Courts-martial upon the single men; while, during the same period, amongst 540 married men there were but nine district and nine regimental Courts-martial. During that period the single men were non-effective whilst undergoing sentences for 10,428 days; the married men were non-effective under the same circumstances for 574 days. The proportion between them, therefore, is, that while the per-centage of Courts-martial on single men was 8·74, on the married men it was 2·40; and the time that they were non-effective when imprisoned, was as 9½ to ½. Drunkenness and absence without leave are the two most prominent offences which have been committed. I go on to show how many men were defaulters during this period: of single men there were 855 cases of drunkenness, 255 of absence without leave, and of miscellaneous offences 151; of the married men there were 37 cases of drunkenness, 2 of absence without leave, and 10 miscellaneous offences. The ratios are, for drunkenness, as 32·93 to 6·85; absence without leave, 9·82 to ·37; and miscellaneous offences, as 5·31 to 1·66. The difference as regards efficiency and sickness between the married and the unmarried men is, that the married men were 3,072 days in hospital, and the unmarried were 64,785 days in hospital; the number of admissions of married men to the hospital was 352, and of unmarried men 4,154. During that period there died, excluding cholera cases, 5 married men and 38 single men. There were sent on sick certificate 4 married men and 54 unmarried men. During the period there were venereal cases admitted to the hospital, 1,063 single men; and the number of days they passed in hospital were 25,702, which equalled the withdrawal of 24 men from duty daily for three years.

1261. What means are there provided for the female children of European soldiers in India?

The only means that I know of providing for the female children is by their marriages with the soldiers or persons attached to the army, and, perhaps, occasionally with any of the tradesmen about the cantonments.

1262. Lord *Elphinstone*.] Do they take service with the officers' wives?

They will not do so; and generally they are unqualified for such service. For orphans there is a female asylum which provides a training, but is so indifferently managed, that it is of very little practical use to them in after life, as far as affording them the means of energetically providing for themselves goes. The sons of the soldiers may enter, if qualified by education, the Medical Subordinate Department; they may enlist, or they may get employment as writers, perhaps; but, generally, I should say there would be very great difficulty in providing for the sons of the European soldiery in India; so much so, that it would be very advisable if any means could be devised of drawing off the pensioners and their families to some of our milder colonies, of Australia, New Zealand, or the Cape.

1263. Did not some of the young people in the male and female asylums lately go to Australia?

Some from the male asylum went, and did well. I do not know whether any from the female asylum went.

1264. Marquess of *Tweeddale*.] In fact, there is great encouragement to increase the number of children among the European soldiers, but there is no provision for them after the death of the parent?

None, except the orphan allowance, very liberally made by the Government, which lasts but for a certain time; there is no means of permanent provision for them.

1265. Would it not be a great advantage if, in order to prevent the immorality which goes on among the female children, there was some means devised to remove them from that country to some other country where they might obtain employment?

Lately the marriages in the Company's regiments have been limited, as in Her Majesty's service, to 12 per cent. I am not aware that immorality prevails amongst

Colonel Robert Alexander.

3d Dec. 1852.

amongst the wives and daughters of the European soldiery at present, though there are bad, and some infamously bad characters among them; but, as one of the effects of the limitation upon marriage, the widows of those who die, and the daughters of all, must remain without any adequate provision, it is a very serious thing to contemplate what the result may too probably be; and I should think it would be a very great advantage if the pensioners and their families could be induced to settle in our colonies, where their families would be an advantage to and not a burthen upon them; they would also be in a climate that would probably suit persons so long accustomed to the heat of India.

1266. Lord *Elphinstone.*] Do you think many pensioners would willingly go to the Australian colonies?

I think they would, if there was a good inducement held out to them to go.

1267. *Chairman.*] Are there many European pensioners in India?

A great many; from the Company's service comparatively few return to England.

1268. Lord *Elphinstone.*] Are they available for garrison duties?

Not the pensioners; they are not under military control; but the veterans in the Company's service are available for military duty; they take garrison duty at Fort St. George; and, except the garrison there, a few at Vizagapatam are the only European soldiers on the coast between Cape Comorin and Calcutta.

1269. Marquess of *Tweeddale.*] How are the Native troops provided with quarters?

When a Native regiment arrives at a station, the Sepoy receives two rupees, and the superior grades proportionate sums, to provide themselves with huts or houses, the Government only giving them the ground upon which the huts are to be built. When regiments are relieved, the incoming regiment takes the huts of the outgoing regiment on a valuation made by the Native officers of both corps; but if the Native regiment marches away without being relieved, the loss of the huts falls upon the men.

1270. Lord *Elphinstone.*] That loss is not covered by the sum allowed by the Government?

Certainly not; and the Native officers and men have sometimes to buy or build huts at one station, while they have others unsold at the place they have left; the Sepoys are also sent upon permanent detached duties, on which no provision is made that they shall have tents, or be hutted; they have no additional allowance for that; and as long as they remain at a station, whatever may be the number of the detached or outpost duties, they do not get more than the two rupees which are given them upon their first arrival.

1271. In the event of a hurricane blowing their huts down, which has, perhaps, happened during your experience, do the Government give them any assistance?

No; I remember one occasion in which the huts of a Native regiment were destroyed twice; the men lost their little properties and the clothes and jewels of their wives; an advance was made by the Government of a few thousand rupees to relieve the immediate distress, and, ultimately, on the recommendation of the Commander-in-Chief, this money was not recovered; but at first it was only granted to them as a loan, which was to be repaid.

1272. Is this, in your opinion, the best system, or is it capable of being improved?

I think that a larger allowance should be made, or that permanent huts might be built, under a proper arrangement, to be entirely kept in repair by the Government. Certainly, when the men lose their huts, by being removed from a station not occupied by a relieving regiment, it seems but just that some compensation should be made for the loss.

1273. Lord *Elphinstone.*] Would the men like the huts built by Government as much as the huts which they put up themselves?

If in the building of the huts sufficient consideration was shown to their feelings, they would, I think, like the huts that were built as much as those that they themselves put up; in the case of a Mussulman, for example, you must not have an open place where persons can look in upon his women, but there must be privacy. If I were holding office in India, and I were ordered to report upon the

Colonel
rt *Alexander.*

Dec. 1852.

the subject, before I made a report, I should like to consult the Native officers, and find what was the feeling of the Natives about it.

1274. Marquess of *Tweeddale.*] Is there not a system in the Bombay Presidency of the Government building huts for the Sepoys?

I am not sufficiently acquainted with the Bombay system to answer the question.

1275. What arrangements are made regarding their food in garrison, in the field, and on foreign service?

The Sepoy, in garrison, purchases his food as he pleases; but at Hyderabad and at Kamptee, and in the Saugur States, if the price of third-class rice exceeds a certain amount, he then receives compensation at the rate of for two seers of rice a day, which I have alluded to before in my evidence. At stations within the Madras territories, they get a lower rate of compensation at the rate of one seer of rice daily for each man. To every regiment there is attached a bazaar, from which he purchases supplies; and in the case of forces in the field, there is a general bazaar, to which he has access. On foreign service he has rations; larger rations are supplied on board ship, according to a scale laid down, and he gets shore rations on land, which are somewhat less.

1276. Are those capable of improvement?

I think that the improvements lately made during the Chinese war were very liberal, and that the rations are now on a very good scale indeed.

1277. How is the Indian army clothed?

The patterns of dress are precisely the same as in the European army; the Sepoy wears a jacket very much like what the soldier used to wear a few years ago, with short tails; the Native officers' dress very nearly corresponds with that of the European officers; but the Cavalry and Horse Artillery wear the Hussar jacket, and the Artillery wear the blue coatee, such as used to be worn formerly in the Royal Artillery, with short tails; the head-dress is what is called a turban, but has none of the advantages of that really useful head-dress.

1278. Is that a convenient dress?

The dress is very inconvenient; their own Native costume, particularly for the Cavalry, would be far better; and if the Native costume was adapted, by uniformity, to military purposes, the soldier would look as well in rank, and be far more efficiently clothed for service than he is in the straitened European dress; the sandals are very inconvenient. When the troops went to China, shoes and stockings were issued to them gratuitously; the shoe is a great improvement upon the sandal.

1279. Did the men object to wear the shoe?

There was not the least objection made to it when they went to China, nor could they have done without shoes in the winter and hard frosts.

1280. Did they object to wear them when they returned?

No; they were allowed, as a mark of distinction, to wear them, and, except in one regiment, do so to this day.

1281. Lord *Elphinstone.*] Would they not dislike any change in their head-dress?

Anything that they thought had the character of a hat, they would object to; as long as what they wear has the appearance of a turban, they have no valid objection to it.

1282. Lord *Colchester.*] Do the Madras Infantry wear a turban?

It is something like a turban; it has a round top.

1283. Is there a shawl round it?

No; they are made of basket-work, with a round top, and there is a little thing at the top which they call the kutorah, the origin of which was, when the Cavalry was transferred from the Nabob of Arcot to our service, the Colonel who commanded made them carry their drinking pots on the top of their turbans.

1284. Marquess of *Tweeddale.*] What is their reason for objecting to wear anything in the character of a hat?

It marks the difference between the Mussulman and the Christian.

1285. Is

Colonel Robert Alexa

3d Dec. 18

1285. Is not the skin of a cow or a bullock objectionable in the eyes of a Hindoo?

Certainly; and yet they wear belts, and ride on European saddles.

1286. *Chairman.*] Are not the clothes generally made in England?

The cloth is sent out from England; the clothes are made at Madras, by the parties who contract to make up army clothing.

1287. Marquess of *Tweeddale.*] Is the system susceptible of improvement?

Yes, very greatly, by assimilating the dress to the Native dress: what is called the Lascar jacket, which comes from the neck well over the loins, might be made a very becoming and useful dress for the Infantry; and if both the dress and organization of the Cavalry approached more towards that of the Irregular Cavalry, they would be far more efficient, and the men better pleased. Sepoys would be much better without shoulder-knots, wings, lace and pipeclay, which are expensive to them, often tawdry, and never useful.

1288. How are they armed?

Precisely as the European soldier is armed; the Sepoy carries the same sized musket and similar accoutrements as the soldier in Her Majesty's Grenadier Guards, or in any regiment in the line: the average weight of an Infantry man may be taken at from 100lbs. to 120lbs., and he has to carry about 48lbs. weight of musket and accoutrements.

1289. *Chairman.*] What is the weight of the musket?

With the bayonet it is 11½lbs.; the weight of the knapsack is about 12lbs.; his accoutrements, with 12 rounds of ammunition, is 6lbs; but in field service he would carry 60 rounds, which would be about 6lbs. itself.

1290. Does the Native soldier always carry his knapsack?

Yes.

1291. But the European soldier does not?

No; altogether, including the clothes and accoutrements, the Natives carry from 47lbs. to 49lbs.; you may take their own weight at from 100lbs. to 120lbs., or 125lbs., and it is extraordinary the marches that they make, and the powers of endurance they exhibit.

1292. What improvements could be made in these accoutrements?

Some improvements have lately been made by order of the Court of Directors, which the Commander-in-Chief at Madras recommended for years before he could obtain permission to carry out: they now equip the men with single shoulder and waist belts, instead of cross belts. As a member of a Board of Officers, to which I have had the honour to be appointed, I am aware that a musket is now prepared which will only weigh 9½lbs. with the bayonet.

1293. Marquess of *Tweeddale.*] With the same bore as the muskets which the European soldiers carry?

This musket is for the European soldiers, but will, of course, be given to the Sepoys, and relieve them as well as the Europeans; hitherto the same weapon has been put into the hands of men whose standard height is 5 feet 5, many of whom are below standard, and but few more than 5 feet 6, as that with which Her Majesty's Grenadier Guards are armed here; the musket should certainly be adapted to the size of the men.

1294. Lord *Elphinstone.*] There would be no objection to having stocks of different lengths, any more than having men of different heights?

That is the opinion of some General Officers of high rank and very great experience.

1295. Marquess of *Tweeddale.*] What contracts are held by officers in the army?

In the Madras army there are two contracts; the saddle contract held by the officers commanding the Cavalry regiments, and the troop or line article contract held by the officers commanding troops. Veterinary Surgeons have contracts for supplying native medicines for horses.

1296. Is that found to be beneficial?

I do not think it is possible to have any contracts conducted better than the

Colonel
obert Alexander.

3d Dec. 1852.

saddle and the troop contracts are in the Madras army: the checks upon abuses are good and effectual; but, as a principle, I think all contracts held by military officers, relating to their own duties, are bad: the officers of the Madras army have sometimes felt that they ought to enjoy the privilege which is granted in Bengal, of holding contracts for the repair of arms, which is a source of emolument: I think that the system is bad, and one that the interest of the public service requires should never be introduced among us.

1297. *Chairman.*] Is the allowance that is made, an allowance of so much for keeping the arms in repair?

Yes; the Madras Government attaches artificers to every regiment; those men repair the arms very efficiently: in Bengal the Government give the officers so much on contract, and they give a portion to the Quartermaster, or to some person to keep up the repairs of arms, the balance being the officers' profit. No establishment can be so good and efficient as one paid, mustered and provided by Government, and subject to the articles of war, which may become a point of great consequence in field service, where dependence upon private engagement may place the interests of the service in a pecarious state.

1298. Is there not this difference, that in England the allowance for the repair of arms is given to the Captains of companies, under the supervision of the Colonel, and is not that sufficient?

In this country you have an armourer, serjeant and artificers attached to each regiment, I believe, and they are persons you have under effectual control in the field or elsewhere.

1299. The Captain is responsible for the arms under the control of the Colonel, and he is looked after by the Colonel?

Yes; but if you have only a private establishment in the field, any individual of it may say that he does not choose to go any further, or incur danger and hardship.

1300. Lord *Elphinstone.*] Formerly, were there not a great many more contracts in the Madras army than there are in the present day?

Yes.

1301. And you think that those contracts have been done away with to the great advantage of the service?

Yes, and though it has been attended with great loss to individuals.

1302. The tent contract was one that was done away with?

Yes, but that was many years ago.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next,
One o'clock.

Die Jovis, 9° *Decembris* 1852.

LORDS PRESENT:

The LORD PRIVY SEAL.	Viscount GOUGH.
The LORD STEWARD.	Lord ELPHINSTONE.
Earl GRANVILLE.	Lord COLCHESTER.

THE LORD PRIVY SEAL in the Chair.

Evidence on the Government of Indian Territories.

THE RIGHT HONOURABLE HENRY, VISCOUNT MELVILLE
is called in, and examined as follows:

The Right Hon. Viscount Melville

9th Dec. 1852.

1303. *Chairman.*] WHAT rank do you hold in the army?
Colonel.

1304. You have seen a good deal of service in the field in India?
Yes; I served in the last Punjaub campaign.

1305. Will you have the goodness to state what command you had?
I commanded the Bombay division of the army of the Punjaub.

1306. You were present during the whole of that campaign?
I was present at the siege of Moultan, and the battle of Guzerat, and the subsequent operations, till the occupation of Peishwar. I was left in command of Peishwar; and after the siege of Moultan, half the Bombay division was left to garrison Moultan, and the other half went on to join Lord Gough's army.

1307. You had considerable opportunity of judging of the conveniences and inconveniences of the mode of moving the Indian army?
Yes.

1308. Will you have the goodness to state the result of your observations upon that subject to the Committee?
The inconvenience which struck me, and which, I believe, everybody else who has served in India has experienced, is the amount of baggage and the number of followers that accompany the Indian army. I made a calculation (I am now stating from memory), and, including the Commissariat, the animals necessary to carry the men's tents, their bedding and knapsacks, I calculated for a European Regiment a camel for every man, and for a Native Regiment about one-half that number of camels; and when this number of animals was in movement, the whole division was hardly an efficient guard for the baggage, supposing you had any serious attack made upon it. In Scinde, where I moved, and where the Bombay Corps was formed, the whole assembling at Rore previous to moving to Moultan, there was a corps called the Baggage Corps, which had been instituted by Sir Charles Napier. At that time the number was about 1,000 men, in three divisions of about 300 each, according to my recollection. This, of course, was not enough to supply the wants of the whole army, and many hundred camels had to be hired; I think we required about 6,000 camels for the whole division, including Ordnance stores, and everything necessary for the equipment of the army.

1309. What was the number of fighting men you had in your division at the time?
Eight thousand.

1310. *Lord*

The Right Hon. Viscount Melville.

th Dec. 1852.

1310. *Lord Steward.*] You mentioned the number of camels; but what was the number of followers?

The Native followers are not so easily calculated, because there is the bazaar; it is about five men for one fighting man. I found this Baggage Corps of considerable use in establishing a system of discipline, and preserving order among the hired drivers of camels, and in acting, to a certain degree, as far as the numbers went, as a guard; but I was of opinion that the original intention which I understood Sir Charles entertained when he formed the corps, viz., that the Sepoy should both guard and drive the camel, was not so easily carried out, inasmuch as when a man had to act as a Baggage Guard, he could not at the same time attend to the driving of the camels. Besides, during the period I was in Scinde, I found that the Sepoy, from not being trained as camel driver, or what is called a Jut, was unacquainted with the treatment of the animal; and, from ignorance on his part, if the animal was sick, or required attention, he was unable to give that attention which was necessary to keep him in condition. After the campaign was over, the Bombay Government requested my opinion upon the utility of the Baggage Corps, it having been in contemplation to disband it previously to the opening of the campaign. I stated, that I had found the corps, as far as its numbers went, useful in maintaining discipline, as I have already stated; but that it was a question in peace time whether the maintenance of such a corps was advisable or commensurate with the expense incurred; that it was true that in the periodical change of the quarters of the regiments, this corps was available; but as it had to be maintained throughout the year, with very little to do, it was a question for the Government to decide whether, for the advantages which might be derived in a campaign, they would continue to maintain this corps in peace time, when its services were not so immediately required. I also stated, that, in my opinion, in order to have the camels properly attended to, it would be advisable to have a Sowar, similar to what then existed in what was called the Camel Corps.

1311. *Chairman.*] What is a Sowar?

The Sowar is a Native trooper; they call the men Juts that attend to the camels; the Sowar is armed; he has a sword. I recommended the Government to have a Sowar who was accustomed to camels, and understood them, attached to three or four camels, and a fighting man, a Sepoy, as a guard to the same number. In that way the Sepoy would be relieved from the duty of driving the camel, and would act only as a guard; he would have nothing to do with the feeding or keeping the animal in condition.

1312. How many men had you for the camels?

One driver to two or three, sometimes to four camels.

1313. Did you find great difficulty in obtaining provender for the camels?

Sometimes; particularly at Moultan there was great difficulty; they had to go a great way for grazing ground.

1314. Was the provender furnished by contract?

When we could not get it in the fields, we were obliged to obtain it in some other way; but in general we sent the camels to grazing ground wherever they could get it, and then, of course, they required a guard.

1315. Did the Commissariat furnish supplies by contract?

They supplied the grain by contract.

1316. Was the contract strictly performed?

I think the Commissariat issued the provender to the camels upon the requisition of the officers commanding, just in the same way as they issued provender for the horses.

1317. But was the contract generally strictly performed?

I do not know that there was any regular contract; the Commissariat found the supplies; they made their own contract, and issued it as it was required by the officer commanding, on his requisition, so much being allowed, and the corps being debited with whatever was the amount issued.

1318. Did the Commissariat always furnish the grain required?

Yes.

The Right Hon. Viscount Melville

9th Dec. 1852.

[illegible]ays given to the camels?

[illegible]ect, when it was absolutely necessary, it was; but not if they [illegible] provender in any other way.

1320. Was there any fraud in subtracting the food of the camels to give it to [illegible] persons?

No; the only thing that used to happen was, that the drivers sent their camels [illegible] graze in a field when it was in wheat, and did not pay the ryots or farmers for the wheat they had subtracted, and then the parties came upon the Government for damages. Every measure was taken to prevent that; but at the same time, do what you would, I am afraid it was too often done, and with very great injury to the ryots.

1321. Viscount *Gough.*] Was there not always an officer sent out with the camels?

There was always a guard.

1322. Was there not also a Commissariat officer sent with them?

No; we had so much to do, that we could not spare them.

1323. *Chairman.*] What class of men were the officers of the Baggage Corps?

When it was first composed, there was a Field Officer appointed to the command, and the officers commanding the divisions, as they were told off, were, originally, what are termed warrant officers, to whom Sir Charles Napier gave the rank of Local Lieutenants in Scinde; those men committed great frauds, and were all three of them brought to a Court-martial, and the Court-martial on one was pending when Sir Charles left Scinde. I think that officer was transported; the other two were tried while I was in command in Scinde, and both were dismissed, and I think imprisoned; certainly one was; I am not certain about the other.

1324. You have stated that they were warrant officers?

Warrant officers, or covenanted officers, in the Company's service.

1325. Were they military officers?

Yes; one man had been in the Artillery.

1326. Lord *Ephinstone.*] They were not commissioned officers?

No; they had local rank in Scinde.

1327. *Chairman.*] They were what we call non-commissioned officers?

They were above non-commissioned officers; it is only abroad that you have warrant officers; store-keepers, clerks, and people of that class, are warrant officers; but I never met with it before, so that I do not know what their rank is. After the dismissal of those officers who had been first appointed, officers from the Company's service were selected for this duty, and when the campaign took place, there were three subaltern officers acting in the capacity of commanding the divisions of the Baggage Corps, there being four European officers in the corps, with a proportion of Jemadars and Native non-commissioned officers, according to the strength of the regiment.

1328. Is there any improvement that you could suggest in regard to the movement of the baggage?

No; in the recommendation I made to the Bombay Government, of having so many Sowars and so many Sepoys with the camels, I stated that it was for them to consider the expense; I received no reply to that, but I have since heard that the corps has been disbanded.

1329. Do you think the existence of such a corps desirable?

The sole question is one of expense, and I cannot say that I should be prepared to recommend the making of such a corps in peace time, for the sole advantage that might be derived for the few months that a campaign lasts.

1330. Lord *Colchester.*] When the army is in active service in the field, do you consider this system of Baggage Corps to be superior to the former system?

I certainly think we derived great advantage from it in the discipline which was observed, and the regularity with which it moved.

1331. *Lord Steward.*] Sir George Pollock stated that he considered that there

The Right Hon. Viscount Melville.

9th Dec. 1852.

there were great frauds in the Commissariat; that the camels did not get their food, but that they were charged the same as if they had got it?

That would arise where there was no Baggage Corps, and no officer in charge, such as we had, whose sole business it was to look after this matter.

1332. You saw no instance of that sort?

No; during the whole of the march the baggage was always well up; and all the duty that they had to perform in carrying ammunition down to the trenches at Moultan, in which duty the camels were employed during the siege, was regularly and well performed, and I have no reason to make complaints of it: I found the officer in charge very attentive to his duty.

1333. *Chairman.*] Have you any observation to make upon the number of camp followers?

Certainly; the number that follow are a great inconvenience; but at the same time, from what I saw, I do not know in India how you can do without them.

1334. You do not think any regulation could be introduced to diminish the number of camp followers?

No, I do not; the camp followers are supposed to find themselves in everything; it was only when they could not obtain grain in the bazaar that the Commissariat issued it to the camp followers: on two or three occasions, I think, I was obliged to issue an order for grain to be supplied to the camp followers, reporting the thing at the same time to the Government, and stating the reason for so doing.

1335. Lord *Colchester.*] In the Bombay army was there not a distinction between registered and unregistered camp followers?

There were certain followers, with respect to whom the Commanding Officer of every regiment knew who they were; they were alone to be allowed to accompany the regiment.

1336. Did they receive their rations regularly from the Commissariat?

No, not regularly; it was only in case of necessity that they received them: each regiment had its regimental bazaar, and there was the general bazaar besides; the Commissariat Officer, or bazaar-master, was responsible for the followers in the chief bazaar, and the Commanding Officer of the regiment, who had what is called a Chowdree attached to each regiment, was answerable for the followers of the regimental bazaar.

1337. *Chairman.*] Have you any observation to make upon the Native troops by whom you were accompanied?

During the siege of Moultan, an affair occurred which showed me, in some degree, the difference in the discipline between the Native regiments of the Bombay Presidency and those of the Bengal Presidency. The affair was reported to me verbally by an officer of my own regiment, who was in command of the covering party of the 60th Rifles. He heard a great noise in the trenches at night, and wishing to see what caused this excessive noise, he went down, with a few men, and there he found a Bengal Native regiment abusing and beating the Sepoys of the 3d Bombay Native Regiment, who were digging in the trenches, as they were ordered to do. The Bengal Sepoys called the others every sort of name in the Hindostanee language that was opprobrious. With some difficulty the officer of the 60th Rifles got the men separated, and the Sepoys of the Bengal Native Regiment were ordered to that part of the trenches where they were to work, but I understood, though that was not officially stated, that during the night the Bengal troops did very little.

1338. Viscount *Gough.*] Had not the men officers with them?

They had; and when one of those officers was spoken to, he declined to place two men in confinement whom the officer of the 60th Rifles pointed out as having been particularly obstreperous.

1339. *Chairman.*] Was he a Native or a European officer?

He was a European officer.

[illegible]40. Viscount *Gough.*] Was the circumstance reported?

[illegible]id not report it; the officer made a verbal report of it to me, and told me that

that he was prepared to make it officially, if I required it; but, in consequence of other reports which I had made, and particularly of some Engineer officers forcing a guard not having been taken any notice of, I did not myself officially report the circumstance. On the march up to Peshawur, after the battle of Guzerat, the first day the Bombay division led, and I experienced no inconvenience then, as the division marched according to the orders which they had received on the original formation of the division at Roree, and which, I may state, were the same as the orders given to the Light Division in Spain, with the adaptations left by Sir Charles Napier in manuscript for the Native troops. On the second day's march the Bengal division led, and very soon after the column was in movement, men from the Native regiments fell out, as it appeared to me, without leave, and straggled in every direction. It got so bad, and complaints came from the Scinde Horse, who were in the rear-guard, that they could not get the men up, that I rode to the front, and asked Sir Walter Gilbert, who commanded, to allow us to halt. He did so, and of one regiment I counted 100 men who had fallen out. I asked the officer of the regiment how many men they allowed to fall out, and he said that no men had fallen out except those who had leave. The number appeared to be so large, that I asked how many they did allow to fall out, to which I got no answer. A short time after this, I saw a Subahdar and 10 or 12 men fall out, and go to a tank: the Subahdar first took off his sword, then his sash, and undressed, and so did all the men, and they went into the water, the column being at that time in movement. A European officer stood there for a short time looking on, and said nothing, and then he cantered away. In consequence of its being more convenient, in order to secure a supply of water, the Bengal and Bombay divisions were separated that night; the Bombay division halted, the Bengal proceeding about seven miles further. That night, at dark, about six o'clock in the evening, my tent was surrounded by a number of Sepoys, and my servant came in and told me that some Sepoys wanted to speak to me. Being rather surprised at this, I asked what possible business they could have there at that time of night, or, indeed, what they did there at all? and he said they were Bengal Sepoys, and not Bombay, and they wanted to know where their lines were. I told them that they were about seven miles off, as far as I knew, and they left me; but whether or not any notice was taken of their being so far behind, I do not know.

1341. *Lord Steward.*] You have spoken of there being 100 men who had fallen out; out of how many was that?
Out of, I suppose, 600 or 800.

1342. Viscount *Gough.*] Had the men fallen out at any of the occasional halts which took place on the march?
No, they had not fallen out at the occasional halts, but they had fallen out during the march.

1343. Lord *Elphinstone.*] It was six o'clock when the men came to your tent to know where their lines were, and you informed them that their lines were seven miles off; at what o'clock ought they to have reached their lines?
If they had marched with their regiment, they ought to have reached their lines at four o'clock in the afternoon, two hours before they reached me.

1344. Viscount *Gough.*] The army was advancing as rapidly as it could march after the Sikh army at that time?
Yes.

1345. The Sikh army were a considerable way in your front?
The Sikh army had by this time got to the Jhelum; we did not know it at the time, but we found it out on reaching the river.

1346. *Chairman.*] Do you lay the blame of that on the European or the Native officers?
I blame the European officers certainly; for I think, if they had maintained proper discipline, that would not have occurred.

1347. Were the Bombay regiments well officered with European officers?
Yes; the officers were pretty fair in number; for the officers who held staff appointments, upon the war breaking out, were sent back to their regiments, some of them having been absent from them for years.

The Right Hon. Viscount Melville.

9th Dec. 1852.

1348. This, of which you spoke, was the case of a Bengal regiment?

Yes; but the absence of officers from their regiments is the same, both in the Bengal and the Bombay army.

1349. In your opinion, is the number of European officers that generally remains with the regiments, sufficient?

The number that remains with the regiments on ordinary occasions, in my opinion, is not sufficient. I may also state, that, upon the occupation of Peishwar, half the force that occupied belonged to Bombay, and the other half to Bengal. The officer who commanded one of the Native Bengal regiments officially applied to me to know whether the guards which I had ordered to mount daily, might only be relieved weekly; this being a practice to which I had the greatest objection, and never knew exist anywhere, and being totally at variance with the practice of the Bombay army, which relieved guard in the same way as Her Majesty's troops, I positively refused. The reason he asked for this system to be introduced was, that his men had to march a mile to relieve guard; he stated that in his letter. As my own men at Poonah used to march upwards of two miles every morning, I considered it perfectly absurd to give such a reason; besides, when this practice prevails, there is no guard, in fact, as the men undress, and take off their accoutrements; and the sentries are not relieved regularly by non-commissioned officers, and the system, in every respect, is subversive of all discipline.

1350. Had you any enemy in the neighbourhood at the time?

None, except the robbers from the hills.

1351. Viscount *Gough.*] Do you mean to say that the whole guard took off their clothes?

Every single man. I then gave an order that the guard should mount in the same way as they do in the Bombay Presidency; the system being there, that half the guard is allowed to go away from eight to twelve, and the other half from twelve to four, for the purpose of cooking. The Naick and Havildar are never permitted to leave guard: if they are married, their wives, or one of their own caste, bring them their food, and after four o'clock in the afternoon the whole guard must be properly accoutred and dressed, and remain so till relieved the next morning. At Peshawur there were several non-commissioned officers, guards at the different gates, and on one or two occasions an officer passing the guard, rather unexpectedly in the middle of the day, when it was not usually visited, it was reported to me that the whole guard was absent, with the exception of the sentry; this occurred more than once.

1352. *Chairman.*] Were those Bengal men, or Bombay men?

Bengal men. This unfortunately happened on the very day when I was relieved by Sir Colin Campbell, who assumed the command there when I left. I do not think this could have happened if the Native Adjutant of the regiment, or, in fact, if the officers generally, had paid attention to the manner in which the men were instructed to do their duty.

1353. Lord *Elphinstone.*] You were in command at Peshawur at that time?

Yes.

1354. Did you take any notice of this circumstance?

I wrote to the Commanding Officer about it, but the thing was denied.

1355. Viscount *Gough.*] Is it not the duty of a Field Officer to visit the guard?

Yes; but those visits should be between four o'clock in the afternoon and sunset, and then again at night after 10 o'clock, at any hour he chooses before sunrise.

1356. If this field officer, on visiting the guard, found that the men were absent, or were undressed, he would report the circumstance?

He would; but this occurred about nine o'clock in the morning, when Sir Colin Campbell went round himself to see where the guards were, and he found this guard absent.

7. Could an occurrence of that sort ever take place without the Commanding

manding Officer of the garrison knowing it from the report of the Captain of the day, or the Field Officer of the day?

It ought not to take place without the Commanding Officer knowing it.

1358. *Lord Steward.*] The officer who reported it to you was made aware of it by accident?

I think on the first occasion when it was mentioned to me, it was mentioned by the Brigade Major, and he found it out by accident.

1359. Did he make any official report?

He reported it to me verbally; I asked him what regiment it was, and told him to write to the Commanding Officer of the regiment; but the Commanding Officer of the regiment appeared to know nothing about it. I endeavoured to ascertain where the men were: I thought that, perhaps, they had gone to the bazaar, and that we might be able to show that they were there at the time; but, however, I could not ascertain.

1360. But if it was ascertained positively that they were absent, that would be sufficient?

The Brigade Major said that he was positive that the guard were absent; but the Commanding Officer of the regiment denied it, and said that they had not left their post.

1361. Viscount *Gough.*] Being so unusual and unmilitary a course, might it not have been the case that the guard had been withdrawn altogether?

No, because the sentry was standing there.

1362. *Chairman.*] Did you find any similar neglect of duty on the part of the Bombay troops?

No, I never knew them absent in that way; of course irregularities may have occurred; but I do not recollect anything particular having happened; they were generally very attentive to their duty.

1363. When you were before the enemy, did you find a want of discipline?

No; at Guzerat I had no opportunity of judging; we were on the left of the line; the enemy very civilly walked away. We had not much to do there; the fighting was on the right of the line; but they moved very well, and regularly; nothing could be better.

1364. Viscount *Gough.*] You mentioned the irregularity of 100 men of one of the Bengal regiments falling out during the march upon Peshawur; was not that movement a very rapid one; in fact, as fast as men could march?

We marched fast; but there was no more reason for their falling out, than for the Bombay men to fall out.

1365. In fact, did not the Bengal division get to the Indus before the Bombay division?

Yes, because the Bombay division was ordered to remain one day's march in the rear. I remained, by order, at Rawul Pindu one day after the Bengal column advanced; but we overtook the others at the Indus.

1366. The others halted there to form the bridge?

They halted till the bridge was repaired, which occupied 24 hours.

1367. Were not the marches at that time double marches?

Some days' marches were short, and some were longer; generally they were long.

1368. Did not the Bengal division march 32 miles in one day?

Yes; I marched 25 miles, and that was the day of their march up to the Indus; they made a forced march.

1369. Was that the day the men fell out?

No, it was on the second day's march that they fell out; at least, that was the only day I saw it, for after that, we did not march together, except from Honmuck to Rawul Pindu, and then the Bengal regiments did not march in regular order.

1370. Lord *Colchester.*] Did you find the troops in the Bombay Division attend strictly to orders?

Yes;

The Right Hon. Viscount Melville.

9th Dec. 1852.

Yes; after two or three days, there was not the slightest disobedience, and I had no trouble whatever.

1371. *Chairman.*] Are they a different class of people in the Bombay and the Bengal regiments?

They are the same class of people; but in the Bombay regiments there are different castes in the same regiment: there are Rajpoots, Brahmins, Hindoos, and other castes in the same regiment.

1372. Is not that the case in the Bengal regiments?

I believe they are more confined to one caste in each regiment.

1373. What caste is that?

It may be Rajpoots, or Brahmins, or some other caste. One advantage in the system of the Bombay army is, that the Native officers do not rise by seniority; they are made by selection. So much was Lord Dalhousie struck with the appearance of those officers that he saw at Moultan, that, having met me on my way home, he asked me how it happened that the Native officers in the Bombay army were so young as they were, and such active and intelligent looking men, they would make grandsons, he said, to those in the Bengal army.

1374. Do you attribute a great part of the evils you have stated in the Bengal army to the system of rising by seniority?

I think Native officers in the Bengal army want energy, and, in fact, are too old for their work.

1375. Lord *Elphinstone.*] Did you hear of any inconvenience in the Bombay army from the system of selection of the Native officers?

None whatever, I should say, from all that I heard and saw, that there was great advantage attending it, that you got the best men for the situations.

1376. You did not hear of any disaffection or jealousy of European officers on the part of the Native officers?

No.

1377. Has not the Bombay army been distinguished by its good conduct?

Yes, I have understood so, and I can answer for that portion which was under my command, that, with the exception of those prejudices which you must attend to with regard to cooking and other native prejudices, they did their duty as well as you could expect them to do, they endeavoured in every way to imitate what they saw the soldiers in Her Majesty's service doing. The effect of the system in the Bombay army is to bring the Native as near to the European soldier in the performance of his duty as he possibly can be brought.

1378. Are there not great diversities of castes in the soldiers of the Bombay army?

Yes, there are three or four different castes.

1379. *Chairman.*] Had you any opportunity of judging of the Cavalry?

The Scinde Irregular Horse, which I had with me, was particularly distinguished, and I should say, without any exception, they were the best corps of Irregular Cavalry that I ever saw.

1380. Had you any Native Regular Cavalry?

I had one regiment, but it did not go beyond Moultan.

1381. Were the Scinde Horse natives of Scinde?

No, a great many were Hindostanees.

1382. Lord *Elphinstone.*] What is your opinion of the relative merits of the Regular and Irregular Native Cavalry?

I cannot say that I had much personal observation; from what I saw and heard, I should say, that the Irregular Cavalry were preferable; but I never had any fair means of putting the matter to the test; the Scinde Horse served throughout the whole campaign, and were distinguished; the Bombay regiment of Lancers remained behind at Moultan; what they had to do was done excessively well, and I had no reason to find fault with them; but I think the men prefer their native dress to being dressed in the European mode, and they are better when they are dressed in their native dress than when they are dressed like the Europeans.

1383. Viscount

The Right Hon. Viscount Melville.

9th Dec. 1852.

1383. Viscount *Gough.*] The Scinde Horse receive 30 rupees a month pay?
They receive something more than the Bengal Irregular Cavalry; the Scinde Horse are uniformly armed, and, in fact, uniformly dressed; Major Jacob, who commanded them, got swords for them from England, and also carbines.

1384. *Chairman.*] Of what shape are the swords?
They are like the regulation swords; but they are in a leather scabbard, suspended by a belt from the shoulder.

1385. Viscount *Gough.*] They were like our old Cavalry swords, rather bent?
Yes; not so much bent as the Sikh swords, but a little more bent than the Regulation swords; the carbine weighed six pounds, and I think it is a far more useful weapon for Cavalry than the heavy carbine which our own troops used, and which the Regular Native Cavalry also used; the Scinde Horse used those carbines very well.

1386. Are not the Cavalry of the Native states armed with matchlocks, which carry the shot further than our carbine?
An officer commanding a Bengal Irregular Native corps told me, that he was very anxious to get arms similar to those used by the Scinde Horse, from the facility of loading, and from their being much better adapted to Cavalry than the matchlock.

1387. *Chairman.*] Are there any other observations which you wish to make upon the subject of the army in India?
The only observation I should wish to make is, that, from matters that came under my cognizance, it appeared to me very desirable that wherever Queen's troops were stationed, the brigadier or officer in command should be a Queen's officer; not because the others do not understand their duty, but they do not understand the regulations of the Queen's service, and it is always desirable, on that account, that the superior officer should be a Queen's officer.

1388. Lord *Elphinstone.*] How did the Commissariat keep up in that rapid advance which you made upon Peshawur?
They did, very well.

1389. You were always well supplied with provisions?
Yes, the whole of the baggage was up; in fact, during the whole of that campaign we were in luxury; we never were without our tents.

1390. Viscount *Gough.*] You had all the comforts you could have upon a campaign?
Yes: I should observe, that there being so many staff appointments which can only be supplied from European regimental officers, it appears to me that it would be very desirable that the establishment of each regiment should be increased to such an extent as to give a sufficient number of officers to do the duty of the regiment, and at the same time to supply officers for staff and civil appointments.

1391. Lord *Elphinstone.*] Are not the Bombay Horse Artillery differently equipped from the Bengal Horse Artillery?
Yes; the Bombay Horse Artillery are equipped upon the same principle as the Royal Artillery, with six-pounder guns; the only difference being, that they use six horses, instead of four; but they drive with the shafts, and are in every way appointed in the same manner as the Royal Artillery. At Peshawur I had a troop of Bengal Horse Artillery and a troop of Bombay: on trying the speed with which I could get into action, I found that the Bombay Horse Artillery opened four guns before the Bengal Horse Artillery opened one. Another disadvantage I observed in the Bengal Horse Artillery is, in having a man upon each horse. They are obliged to bring the waggon into action: instead of unlimbering and turning the gun round by hand, they make a complete wheel, so as to put the gun in the direction in which they wish to fire. In bringing the gun into action, all the men on the off-horses dismount, as well as the centre driver, thus leaving only two drivers to the limber and waggon respectively to take charge of the six horses, and, of course, any casualty occurring, increases the difficulties which would otherwise be felt.

The Right Hon. Viscount Melville.

9th Dec. 1852.

1392. In the event of the Horse Artillery being attacked by Cavalry, the detachment system is much better than the other system?

Yes. The only reason I ever heard for the Bengal system is, its being less expensive; but I think it would be far better to have fewer troops of Horse Artillery, both Native and European, organized on the same principle as those of Bombay, than to have the number that they have, which are by no means so efficient. The Bengal field batteries, with the exception of having a man upon each horse, I thought equally effective with the others.

1393. Do you think the Arab horses are better than the stud horses?

Yes, much better.

1394. *Chairman.*] Had you any opportunity of forming an estimate of the comparative expense of Arab and stud horses?

No, I had not: the Regulation allowance in Bombay for their Cavalry (and I think it is the same for the Artillery) is 500 rupees, which is about 50*l.*, about double what is allowed in this country. In Bengal the Artillery use a pole, while in Bombay they make use of the shaft, the same as the Royal Artillery. There may be a question as respects the Arab horse, which is the best; there can be no doubt, if the Arab horse is strong enough to bear the weight, the shaft is better than the pole.

1395. Lord *Elphinstone.*] In a flat country is it better?

I think so; you have a much greater lever with the shaft than with the pole.

Ordered, That this Committee be adjourned.

Die Martis, 1° *Martii* 1853.

LORDS PRESENT:

The Lord President.
Marquess of Salisbury.
Earl Graham.
Earl of Harrowby.
Earl of Ellenborough.
Viscount Canning.
Lord Elphinstone.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Glenelg.
Lord Monteagle of Brandon.
Lord Broughton.

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

J. C. Melvill, Esq.

1st March 1853.

JAMES COSMO MELVILL, Esquire, is called in, and examined as follows:

1396. *Chairman.*] A statement of the total expenditure in each year from 1834–35 to 1849–50 on account of the Indian Navy, was handed in by you to this Committee?

Yes; the account is dated in June 1852.

1397. Will you be so good as to state what was the origin of the Indian Navy for which that expenditure is now incurred?

The force formerly denominated the "Bombay Marine," and now denominated the "Indian Navy," has existed as long almost as the East India Company itself. In the early efforts of the Company, in the 17th century, to establish trade in India, it was found necessary to arm their commercial ships as a means of defence against the Dutch and Portuguese, Native States, and piratical hordes. In 1612 a separate force was established, consisting of gun-boats, which were used for direct protection, and for convoy; in 1614 this force, united with the Naval force then belonging to the Mogul, sustained a sanguinary and successful contest with the Portuguese; and from this time the Bombay Marine may be said to have been established: various alterations have from time to time been made in it, and I think it will be found, upon inquiry from competent witnesses, that it is now in a more efficient state than it ever was.

1398. Has it always been under martial law?

At a very early period of the existence of the Company they received a Charter from the Crown, authorizing them to maintain fleets, and to exercise martial law. In process of time questions arose affecting the exercise of such power under that authority, and in 1807 a seaman having deserted from the Bombay Marine, when he claimed his pay, it was refused to him, upon the ground of his desertion. He sued the Company in the Recorder's Court, at Bombay, when the Recorder, the late Sir James Mackintosh, held, that the power of martial law, granted by the Charter, was too general; and consequently the man recovered his wages: from that time various questions arose; this construction of the law was sanctioned by other decisions in similar cases, and also on points affecting impressment; seamen deserted almost at pleasure; discipline was most imperfect. Soldiers employed as marines were subject to the Army Mutiny Act, whilst the seamen were exempted, and the officers of ships commissioned by the Company had no recognized rank, either with the Company's Army, or with the officers of the Royal Navy. In 1827 efforts were made to remedy this state of things: an Act of Parliament was passed, applying the Company's new Mutiny Act to the Bombay

J. C. Melvill, Esq.

1st March 1853.

Marine, under the designation of a Marine Corps, into which all the officers were embodied, and in which the Superintendent held the commission of a Major-general. It was a condition of this arrangement, that the office of Superintendent should be filled by a Captain of the Royal Navy, it being considered important by the naval authorities in this country that there should be a resident authority upon the spot, who was by previous experience conversant with the system of martial law. A warrant was at the same time issued, giving to the officers of the Bombay Marine relative rank with the officers of the Royal Navy, upon the condition that the officers of each grade of the Company's Marine should rank below all officers of the same grade in the Royal Navy.

1399. Would a Lieutenant in the Queen's service be under the orders of a Captain in the Bombay force?

He would. The arrangement for applying the Army Mutiny Act to the Indian Navy proved very unsatisfactory; it was especially objectionable in the constitution of courts-martial; and in 1840 an effectual remedy was applied; an Act was passed, the 3d & 4th of Victoria, c. 37, authorizing the Legislative Council of India to frame a naval code for the government of the Indian Navy. This was done, the code having been previously approved of and confirmed by the home authorities; and it is under that arrangement that the corps is now governed.

1400. Lord *Monteagle* of Brandon.] Is that a permanent Act?

It is.

1401. *Chairman.*] When were steamers introduced into the Bombay force?

In 1837 it was determined gradually to convert the force into a steam navy.

1402. Earl of *Ellenborough.*] Was not the "Diana," which was employed in the Burmese war, a Company's steamer?

Yes; she was a steamer stationed in Bengal. Before it was determined to convert the Bombay Marine into a steam navy, there had been one or two steamers belonging to the Company in India. The "Hugh Lindsay" was one, and was attached to the Bombay Marine.

1403. *Chairman.*] Can you state what are the principal duties on which the Bombay force is employed?

The duties have been defined by the Court of Directors to be, war service whenever required, the transport of troops and stores, the occupation and navigation of the Indus, the suppression of piracy, surveying, and the conveyance of the mails between Bombay, Aden and Suez.

1404. With regard to transport, is it never the custom in India to contract for vessels to transport troops and stores?

Occasionally vessels have been hired for the purpose of conveying troops.

1405. Lord *Broughton.*] The naval force is not now called the Bombay Marine, but the Indian Navy?

The designation was changed in the year 1828 from "Bombay Marine" to "Indian Navy."

1406. *Chairman.*] What are the duties of the Indian Navy with respect to the navigation of the Indus?

The vessels on the Indus are chiefly employed in the transport of troops and stores. There is an officer now waiting to be examined before the Committee, who superintended that department of the service for some years.

1407. Lord *Colchester.*] Must not the vessels employed upon that service be a different description from the others?

Yes; they are small iron steamers, of light draught of water, not drawing above 2½ or 3 feet.

1408. Was not the original object of establishing the Bombay Marine rather to protect the trade in the Persian Gulf than any thing else?

That was one great object.

1409. And it consisted of small armed brigs?

Yes; gun-brigs principally.

1410. Marquess of *Salisbury.*] What is the largest class of ships now?

There

J. C. Melvill, Esq.

1st March 1853.

There are three of 1,400 tons each, and 500 horse-power. The "Moozuffer" is 1,440 tons.

1411. Carrying how many guns?
She carries nine guns

1412. What service is she employed on?
She is employed at present in the Burmese war. The two other large steam frigates are the "Freerooz" and the "Ajdaha."

1413. Lord *Wharncliffe.*] And the "Acbar"?
The "Acbar" is 1,143 tons.

1414. Lord *Monteagle* of Brandon.] In what portion of the mail-packet service are the vessels of the East India Company employed?
Four of them are generally considered available for that service.

1415. Will you be so good as to state what portion of the mails are conveyed by those vessels?
Between Bombay, Aden and Suez the mail is conveyed once a month, and between Bombay and Aden there is a second monthly communication.

1416. Have not difficulties been felt with respect to the general postal communications of India by steamers, in consequence of a portion of that service being taken up by the Indian Navy?
The Peninsular and Oriental Company have been anxious to get the whole; but I am not aware that their not having obtained the whole has caused any inconvenience to the public.

1417. Has there been no inconvenience felt with respect to the great lines of communication, by reason of the service ceasing to be continuous at a certain portion of the line, and being there taken up by another and independent authority?
It only ceases to be continuous in the bi-monthly communication between Bombay and Aden; and it is only within the last few months that an arrangement has been made for a second communication between Calcutta and England.

1418. Earl of *Ellenborough.*] Have not the Company's vessels been frequently driven back upon the voyage from Bombay to Aden?
Not frequently. There was a case last year in which the "Victoria" was driven back during the monsoon.

1419. Lord *Monteagle* of Brandon.] Do you consider that these postal services are in themselves necessary with a view to the maintenance of the Indian Navy, so as to make it a sufficient motive to continue those postal services in the possession of the Indian Navy, rather than to execute them by a general system of contract?
The Indian Navy is a very small service, and ordinarily, in times of peace, there is perhaps scarcely sufficient scope for their employment; and it has been thought to be beneficial for the Indian Navy that they should have that regular means of employment.

1420. Have there not been complaints of inconveniences felt by reason of this mixed sort of service, partly through contract and partly through the service of the Indian Navy?
There have been some complaints on the part of passengers; but I am not aware that they have taken any definite form; inquiry on this point was made by a Committee of the House of Commons two or three years ago, when it was not, I think, apparent that there had been any distinct ground of complaint.

1421. Lord *Elphinstone.*] Are you not aware that the service is very unpopular with the officers of the Indian Navy?
It was unpopular some years ago; but I think, if the Committee will ask a professional witness, who is acquainted with the Indian Navy, and with the feeling of the officers, he will give them satisfactory evidence upon that point.

1422. Earl of *Ellenborough.*] If it is considered convenient to employ some of the ships of the Indian Navy during peace in the transport of mails, what is done with the mails when those vessels are taken off for war service; how are the mails carried then?
There is no doubt that whenever war arises, inconvenience must be the consequence, and that perhaps would be the case even if it were by private contract

C. Melvill, Esq.

4 March 1853.

that the mails were conveyed; it is impossible to imagine a state of war without inconvenience resulting from it.

1423. If the mail service were performed by vessels not intended for war, that inconvenience would not arise?

I can venture to say that during the Chinese war there was no interruption whatever in the transport of the mails, although there was a large demand made upon the Indian Navy for service during that war.

1424. Lord *Monteagle* of Brandon.] Have you any doubt that for the mail postal service one continuous contract, carried on by one single authority, must, from the nature of things, be infinitely more desirable, with a view both as to cheapness, regularity and expedition, than the carrying on the same service under a divided authority?

It might be more advantageous in some respects; but there are other grounds upon which the mail communication has been partially left in the hands of the Indian Navy; it has been thought desirable, from motives of policy, that the flag of the Company, as the rulers of India, should be seen constantly in the Red Sea and in Egypt.

1425. Marquess of *Salisbury*.] What is the strength of the establishment of seamen?

There are 3,866, of whom 1,789 are Europeans, and 2,077 natives.

1426. Earl of *Ellenborough*.] You are aware that the crews are entirely changed in time of war?

The number of Europeans is increased.

1427. The ships are manned by natives during peace?

In great measure, though I believe that the number of Europeans has lately been increased in our steamers even during peace.

1428. Is not it considered a measure of economy to get rid of Europeans, and to take natives in time of peace?

The employment of natives is more economical.

1429. Marquess of *Salisbury*.] Are there any Europeans on board except the officers?

Many.

1430. Is the establishment of officers the same as in the Royal Navy?

Very nearly: there is a statement before the Committee, from which it will appear that we are not manned as fully as ships in the Royal Navy.

1431. Is there any difference in the pay of the officers of the Royal Navy and of the Indian Navy?

I do not think there is much difference, the officers of the Royal Navy having an allowance of batta from the Indian authorities when they are employed within certain limits.

1432. Is the pay of the European seamen higher in the Company's service than in the Royal Navy?

The pay of the European seamen is about 2 *l.* a month, with provisions.

1433. Has any estimate been made out of the expenditure of the Indian Navy?

The statement laid before the Committee shows the gross expense.

1434. Is there any estimate of the number of men required, or of the total expenditure, applying simply to the wages of officers and men?

A statement has been laid before the Committee of the total expenditure in each year, from 1834 to 1850, in India and in England, on account of the Indian Navy, including the cost of building and repairs, the charges on account of ships and vessels afloat, engaged in the conveyance of mails and otherwise, and the charges for services ashore and afloat.

1435. Earl of *Ellenborough*.] With regard to the comparative rates of pay in the Queen's Navy and in the Indian Navy, the pay varies according to the rate of the ship. Now, is not a first-rate in the Queen's Navy a totally different ship from a first-rate in the Indian Navy?

I do not think the terms "first-rate" and "second-rate" in the Indian Navy

J. C. Melvill, Esq.

1st March 1853.

have any analogy to similar terms in the Royal Navy; they were arbitrary terms, fixed in reference to allowances of pay.

1436. Has the term "first-rate" reference to the size of the vessel, or to the seniority of the Captain?
I think rather to the allowances of the Captain.

1437. Is there not a considerable difference in the pay of the Captain according to the rate of the ship?
The Captain of a first-rate in India gets 900 rupees a month, and the Captain of a second-rate gets 800; the Commander of a second-rate gets 700, and the Commander of a third-rate 600.

1438. Lord *Colchester.*] Can you state the number of men borne in a first-class ship?
About 80 in the "Moozuffer," the largest frigate.

1439. Marquess of *Salisbury.*] Can you state what is the cost of the 3,000 seamen that are at present engaged in service in the Indian Navy?
I have not the total; I can tell you what the wages of a seaman are; an able seaman gets 20 rupees a month.

1440. Can you give us the cost of the allowances?
No; I could give you the total cost of the whole body of the seamen.

1441. Can you give the cost of one individual?
I can only tell you what his wages are; his allowances only consist of provisions

1442. What is the cost of the provisions?
That is included in the stores. There would be some difficulty in making out a statement of the cost, because the provisions are partly salt provisions, sent from England, and partly obtained by purchases made in India.

1443. Lord *Wharncliffe.*] Could it be made out in any office in the India House?
Possibly it might; if not, it could be made out in India.

1444. *Chairman.*] Is the expenditure for the Indian Navy under the control of the Home Government, or under the control of the Indian Government?
It is audited at Bombay.

1445. Lord *Colchester.*] You say the pay is about 2 *l.* a month; are the men allowed pensions for wounds or for long service?
Yes; there is a system of pensioning analogous to the advantages given to the Army by Lord Clive's Fund.

1446. Does that include both wounds and long service?
Yes.

1447. Earl of *Ellenborough.*] But is it not the fact that the seamen are rarely engaged permanently; are they not always dismissed upon the occurrence of peace?
Many of them have remained a long time in the service. It is the practice of the East India Company to engage boys from the Marine Society, who are apprenticed for seven years; and in many cases they remain after the expiration of the term of their servitude.

1448. Lord *Wharncliffe.*] There appear to be some vessels, the "Pluto" and the "Phlegethon," and others, which are not included in the list of Bombay Marine, but which belong to a Naval Establishment at Calcutta: will you describe the nature and extent of that establishment?
There are a considerable number of vessels employed in Bengal; they are officered and manned under arrangements made by the Bengal Government, the officers being selected by them from persons found in India, and they are not under martial law.

1449. Is there a dock-yard at Calcutta?
Not applicable to steamers of large size.

1450. Earl of *Ellenborough.*] Is there not a small one where they can repair ships?
There is a small dock-yard at Kiddepore.

1451. *Chairman.*] What reason is there for those two naval establishments being separate, and under different regulations?
That has been the result of accident.

J. C. Melvill, Esq.

——

1st March 1853.

1452. Lord *Wharncliffe.*] Can you state what the extent of the naval establishment at Calcutta is?

There are nine steamers—the "Tenasserim," the "Enterprise," the "Fire Queen," the "Nemesis," the "Phlegethon," the "Proserpine," the "Pluto," the "Mahamuddy'," and the "Hooghly."

1453. Earl of *Ellenborough.*] What was the arrangement with those Calcutta steamers that served in the China war?

They had letters of marque from the naval Commander-in-chief.

1454. *Chairman.*] Were they under martial law?

Only in that way.

1455. Lord *Wharncliffe.*] The Act of 3d & 4th Victoria applies solely to that which was called the Bombay Marine?

Yes.

1456. Are those vessels officered from the Indian Navy?

No, they have no connexion with the Indian Navy.

1457. Is the Calcutta service considered a separate naval service?

It is a separate naval service.

1458. Is it a permanent naval service?

Yes.

1459. Do the officers remain receiving pay as naval officers during peace?

Yes.

1460. Lord *Elphinstone.*] Where they are not employed?

They are generally employed.

1461. *Chairman.*] Do they answer the same purposes as the Bombay Navy?

I think so; they are now employed in the Burmese war; they went to China, and they check piracy in the Straits.

1462. Are they employed in surveying?

I think when surveys have been required in Bengal, they have been generally made by officers of the Indian Navy.

1463. Lord *Elphinstone.*] Do the officers of the Calcutta Marine receive the same pay as the Indian Navy?

No; their pay is differently regulated; it is a lower rate of pay. If the Committee would be pleased to call for such a statement of the Bengal Service as they have been furnished with for the Bombay, it might be readily given, and it would afford all the information required.

1464. Lord *Wharncliffe.*] Are those steamers which you have named as belonging to the Calcutta Marine, steamers of a large size?

The largest of them is the "Tenasserim," of 760 tons and 220 horse-power. The "Nemesis" is the vessel that performed such good service in China, under Captain Hall. The "Nemesis" and "Phlegethon," "Proserpine," and "Pluto," are all iron vessels; they were built in this country, and sent out to India, and immediately diverted to the service of the China war.

1465. Earl of *Ellenborough.*] Were they not sent out for that purpose?

Their destination was changed for that purpose.

1466. Lord *Colchester.*] Are the officers of the Bengal Marine under martial law?

Not except during war, and then under authority from the Naval Commander-in-chief.

1467. *Chairman.*] Have the officers in this service received any honorary rewards?

No; the officers of the Indian Navy have been declared to be eligible for the honours of the Bath, and certain officers have been recommended for that distinction: but they have not yet succeeded in obtaining it.

1468. Earl of *Ellenborough.*] Was not Captain Hall an instance?

Captain Hall was an officer of the Royal Navy, and was selected by the East India Company to command the "Nemesis," he having permission from the Lords of the Admiralty to accept that command.

1469. Was

J. C. Melvill, Esq.

1st March 1853.

1469. Was that a solitary instance?

The "Pluto" was, I believe, commanded by an officer of the Royal Navy, as was also the "Phlegethon" and the "Proserpine."

1470. Was not there a case in which the Commodore of the Indian Navy, residing at Calcutta, was knighted?

Yes, there was, but he was acting in a civil capacity.

1471. *Chairman.*] Have any steps been taken by the Government to obviate the anomaly of having two different services under different regulations, and with different rates of expenditure?

It has been repeatedly suggested from home that those vessels should form part of the Indian Navy: no arrangement of that kind has yet been deemed practicable; but Lord Dalhousie is considering a proposition of the Superintendent of Marine in Bengal, that the Bengal service should be incorporated with the Bombay; and he only postpones expressing a final opinion upon it pending the operations in Burma.

1472. Has any larger proposition ever been considered by the Government, whether, with regard to the mail service and the transports, those could be done by contract with private companies, or with individuals; and whether, with regard to the war services and the surveys, those could be entrusted to the Queen's ships, under the pay of the East India Company?

There have been occasional suggestions, that the service should be performed by the Royal Navy, but they have never assumed a practical form.

1473. Do you see any objection to such a course?

I do not see how the Royal Navy could perform the services that appertain to the Indian Navy, unless, indeed, it was a purely local corps, and then the advantage would seem to be questionable.

1474. Earl of *Ellenborough.*] What is the difference between the service performed in the Irrawaddy by one of Her Majesty's steamers and that performed by a steamer of the Indian Navy?

In cases of war I can see no difference.

1475. In time of peace, supposing the Navy to be the Queen's Navy, and the Government of India sent a request to the Admiralty that certain vessels might be sent out for their use, the Government of India defraying the expense, would not those vessels then be under the direction of the Indian Government, in the same way in which the vessels of the Indian Navy are now under their direction?

They would be employed as transports.

1476. They would be employed exactly as the Indian Government would employ their own vessels, for whatever purpose they pleased?

But then, if the Royal Navy were to do the whole work of the Indian Navy, and the Indian Navy to be abolished, the question would immediately arise, What is to become of the navigation of the Indus? There must be a separate establishment for that.

1477. Lord *Monteagle* of Brandon.] Does it appear to you that there would be any difficulty in relieving the East India Company from that portion of the service which is connected with the mails, and carrying that on by contract, as the greater part of the oriental communication are now carried on?

If ever that is done, I hope care will be taken to guard against monopoly.

1478. That is another question; but do you see that there would be any difficulty resulting from performing that part of the service in the ordinary way in which the greater part of the packet service is performed?

There can be no difficulty in conveying mails by contract.

1479. Earl of *Ellenborough.*] The Captain of one of the largest ships in the Indian Navy having 90 *l.* a month, and the Captain of one of Her Majesty's ships of the same size having about 400 *l.* a year, would it not be somewhat cheaper to employ the Queen's ships than to employ the ships of the Company?

A Captain of the Royal Navy, if the present practice were continued, would get 500 *l.* a year as Indian allowance while employed within certain limits.

1480. Is there any reason why that practice should continue; is there anything

P. Willoughby,

5th April 1853.

more severe in the service on that side of India than the service in China, for which they would get no such extra allowance?

I can only say, that that practice has prevailed for half a century; whether it should be continued is for others to determine. The allowances of the Royal Army are higher in India than elsewhere.

1481. Lord *Broughton.*] Have you any separate department at the India House having the consideration of Naval affairs?

Yes; the Marine correspondence is conducted by a separate branch of the Secretary's office, at the head of which is an assistant.

1482. But there is no department of the India House for the separate consideration of Naval affairs, as there is for the separate consideration of Military affairs?

Yes, there is a separate branch, called the Marine Branch of the Secretary's Office, in which the whole of the Marine correspondence with all parts of India is prepared.

1483. But the position of the gentleman at the head of that branch is not the same as the position of the gentleman who is at the head of the Military branch?

It is the same, except that he is subordinate to me.

1484. Marquess of *Salisbury.*] Can you give any account of this head of the Return before the Committee, "Charge of the several Marine Departments, including Staff and Establishments at Bombay, the Persian Gulf, on the River Indus, and in the Bombay Dockyard, the Pilot Establishment, Lighthouse and Floating Lights, Steam Factory, Officers unattached on Furlough, and Non-effective, and General and Miscellaneous Charges;" is there any means of getting at a section of that head?

Certainly; we can divide that head into the several items that are enumerated.

1485. Will those items include the expense of buildings for the purpose of the dockyard, and so on?

There is a separate column, including the cost of building factories.

1486. Can an account be given also of the number of persons employed in the dockyards?

I think so.

1487. Lord *Monteagle* of Brandon.] Is all your building carried on in the East, or do you build in this country, and send out vessels?

We build occasionally in Europe; but preference is given to building in India. It is found that the ships last longer, and it is thought to be advantageous to give employment to the people in the dockyard.

1488. How is the relative expense of the one and of the other?

The absolute expense in the first instance may be larger; but the ships built in India are found to last so much longer as to make it at least equally economical.

1489. Do you build as undertakers yourselves, or do you ever build by contract in India?

I am not aware of any instance in which the Government has built a vessel by contract.

1490. Are you aware how your expenses of building at Bombay would stand as compared with the expenses of a private ship-builder there?

I have no means of judging; but the rate of building at Bombay is high; Her Majesty's Government have observed this when ships have been built there for their service.

1491. Is there not a native gentleman here now who is well acquainted with

There is a Parsee gentleman, who is at the head of the factory at Bombay.

1492. What has been his mission to Europe?

He has come home to this country for the benefit of his health; and has been anxious while here, his health having improved, to become acquainted with the establishments both in this country and in America, and with the improvements in steam machinery.

1493. Has he visited both countries?
He has.

1494. Do you consider him, from his acquirements and his position, to be a competent witness upon this head of inquiry?
I think so.

1495. Earl of *Ellenborough*.] Have you built any vessels at Bombay lately?
There are two now building at Bombay of large size.

1496. But, in general, your vessels have been built by contract in England?
Those built in England have been built by contract, but two or three of the present ships were built at Bombay. The "Feerooz" is one of the finest vessels; she was built at Bombay; as also the "Auckland."

1497. Is not one of the chief reasons of the great expense incurred in building Queen's ships at Bombay the great length of time over which the building has been extended, only a small sum annually being devoted to the purpose?
I am not aware of that.

1498. Do you know how many years they were building the "Meanee"?
I do not know; but I believe it was a long time.

1499. *Chairman*.] One of the items in the account before the Committee is "Pilotage"; can you give the Committee any account of the Pilotage establishment in India?
The Pilotage establishment in Bengal is altogether a Government establishment. There have been attempts made to convert it into a voluntary establishment—an establishment like the Trinity Board here; but those attempts have not been successful.

1500. Was that owing to there not being a sufficient demand for pilots, or to what causes?
The river is very difficult.

1501. Earl of *Ellenborough*.] Is not the River Hooghley becoming much more difficult of navigation?
It is very difficult.

1502. Do you think it would have been possible now to navigate the Hooghley if steam power had not been discovered and applied to naval purposes?
Steam power has greatly facilitated the navigation.

1503. Has it ever been in contemplation to use the main stream of the Ganges, and to make a railway from Calcutta to the point where it comes nearest?
Not that I recollect. There is a proposition for a railway from Diamond Harbour to Calcutta.

1504. But you are aware that there is a perfectly navigable stream which runs up within 60 miles of Calcutta?
Yes.

1505. *Chairman*.] Can you state what the expense of the Calcutta Pilotage establishment is in Bengal?
I think about four lacs of rupees is the pilotage receipt, and about seven lacs the pilotage expenditure; there is a balance of about three lacs of rupees left as a charge on the Territorial Revenue.

1506. Marquess of *Salisbury*.] Are the receipts carried to the account of the general revenue?
Yes, certainly.

1507. Under a distinct head?
Yes.

The Witness is directed to withdraw.

CAPTAIN FREDERICK THOMAS POWELL is called in, and examined as follows:

Capt. F. T. Powell.

1st March 1853.

1508. *Chairman.*] YOU have been a long time an officer of the Indian Navy?
Yes.

1509. How long have you served in that force?
Nearly 30 years.

1510. We have just received, in evidence, a sketch of the origin of that Navy, its present constitution, and the objects for which it is chiefly employed, which appear to be, for war purposes, for the suppression of piracy, for the service of the coast, for the transport of stores and troops, and for the mail service between Bombay and Aden?
Yes.

1511. Lord *Colchester.*] What are the different ranks of officers in the Indian Navy; are they analogous to those in the Royal Navy?
Very nearly. There are Commodores; but they are only temporarily so, while they hold command in the Persian Gulf; there are Captains, Commanders, Lieutenants, Mates and Midshipmen.

1512. Will you state the general pay of each rank?
When employed, the vessels are classed in different classifications; first, second, third, fourth and fifth rates. A captain, when employed afloat in command, gets, if in a second rate, 800 rupees a month; if the same vessel is commanded by a Commander, he only gets 700 rupees a month.

1513. Earl of *Ellenborough.*] What pay has he when not actually employed?
A Captain has 400 rupees, a Commander 300 rupees per mensem.

1514. Half-pay?
Yes.

1515. Lord *Colchester.*] Are there any duties connected with that?
They may be called upon to attend courts-martial and committees on stores, and different duties of that kind.

1516. What is the pay of an able seaman?
Two pounds a month, 20 rupees.

1517. Has he any other allowances besides his provisions?
No; but in war he is allowed prize-money, the same as in the Royal Navy.

1518. Earl of *Ellenborough.*] When a court-martial is held, is it composed of Indian naval officers, or is it a mixed court-martial, including those of the Queen's service who happen to be there?
The courts can be formed mixed; but since the last naval code has been granted to the service, the courts are generally, almost always in fact now, formed of officers in the service, because it only requires five members to form a general court.

1519. Earl of *Harrowby.*] Where are the officers residing when on half-pay are they confined to any particular locality?
Bombay, I think.

1520. May they reside anywhere in India?
Anywhere, I believe, on obtaining leave.

1521. Earl of *Ellenborough.*] What privileges of furlough have they?
Similar to those in the Army.

1522. *Chairman.*] Can you state what proportion of remuneration an officer in your service receives, as compared with what an officer in the Queen's service, commanding a similar sized vessel receives, when batta is added to his pay?
I cannot state that distinctly; I am not quite conversant with the amount that an officer in the Royal Navy gets; but I think a Captain, commanding a vessel

Capt. F. T. Powell.

1st March 1853.

vessel that is classed as a second-rate vessel in the Royal Navy, would receive a considerably greater emolument than an Indian naval officer commanding a second-rate vessel.

1523. But a second-rate vessel in the Queen's service would not be the same sort of vessel as a second rate in the Indian service?

No; but I think a Captain in command of a steam frigate in India would receive, with the addition of the Indian allowance, more than an officer of the Indian Navy commanding a vessel of the same class.

1524. Earl of *Ellenborough.*] Is not the Indian allowance entirely dependent upon the courtesy of the Indian Government, being a thing of which the Admiralty has no cognizance?

No cognizance whatever; it is the gift of the Indian Government.

1525. Have you any marines in your service?

There is a corps of natives that were embodied expressly for the service to serve afloat; because the men of the line do not like serving afloat, and this corps was embodied expressly for the purpose of serving in the vessels of the Indian Navy.

1526. Of what caste are the men?

Of all castes; there are Jews, Hindoos and Mahomedans, and some of the lowest castes in India.

1527. Has any attempt ever been made to recruit for that corps on the coast of Arabia, Arabs of the Red Sea?

I think not.

1528. Earl of *Harrowby.*] Do those mixed castes serve well?

Very well.

1529. They are not deficient in conduct or courage?

Not at all; they are extremely well-behaved men.

1530. They have no difficulty in serving together?

No.

1531. Lord *Colchester.*] Are your crews composed of Europeans and natives?

Yes.

1532. In any particular proportions?

About one-third are natives; but when the vessels are sent on active service, similar to the duties they are now employed upon in the Burmese waters, the only natives then are the stokers and coal-trimmers.

1533. Is there a scale of pensions for wounds and for long service?

Yes; I believe the same as that which appertains to the Indian Army.

1534. *Chairman.*] Can you state anything as to the general popularity of the service among the officers?

Since the service has had a martial law of its own, I think the service has been very popular amongst the officers; but during the time they were serving under a law which made them both sailors and soldiers, I think it was unpopular.

1535. Lord *Wharncliffe.*] You mean since the passing of the last Act?

Since the passing of the last Act I think the service has been popular amongst the officers.

1536. Earl of *Ellenborough.*] Was not the service naturally unpopular at the time when there were but few vessels, and the service was principally confined to the Persian Gulf?

I do not think it was unpopular on that account; I think, at the time when steam was first introduced into the service, there were a number of very old officers then at the head of the service who had been always accumstomed to sailing vessels, who did not like the idea of serving in steamers, and from that cause I think the service was unpopular among the officers; but it was chiefly on account of their anticipating that the service would be changed from a war service to a packet or a transport service.

1537. *Chairman.*] Is that head of service, the packet service, unpopular now?

Not

Not at all; the officers, generally speaking, are as willing to serve in as they are in the vessels of war.

1538. Earl of *Ellenborough.*] What arrangements are made for the maintenance of passengers on board; has the officer in command anything to do with it?
Nothing whatever now, beyond examining the provisions that are sent on board.

1539. The Government take the passage-money, and the Government supply the provisions?
It is done now by contract; native shopkeepers generally in Bombay contract with the Government for so much a head for each passenger.

1540. Lord *Wharncliffe.*] Has a naval officer commanding any one of those ships in the packet service any additional advantage whatever on that account?
None whatever beyond the pay for commanding the vessel which he would receive if the vessel was not employed as a packet.

1541. He receives no special advantage from being employed in the packet service?
None whatever.

1542. Earl of *Ellenborough*] Does it not put the Captain often to great inconvenience?
Very great.

1543. Then how comes it that that branch of the service is not less popular than you describe it to be?
There are many officers in the service who did not like supplying the table, in consequence of disagreeable remarks made by the passengers; it was impossible to please every one, and I think that was the cause of its being taken out of the Captain's hands, and since that change it has not been unpopular.

1544. Lord *Colchester.*] I understood you to say that the emoluments of an officer of the Royal Navy, in command of a vessel on service in India, are greater than those of an officer of the Indian Navy; are we to understand from that, that an officer of the Indian Navy, in command of a steamer like the "Moozuffer," of 1,440 tons, acting on the same service with a Queen's officer, commanding a ship of the same size, would receive smaller pay and allowances than the Queen's officer?
If the ship in the Royal service was commanded by a Captain.

1545. Supposing the case of two vessels of the same size employed upon the same service, and were commanded by officers of the same rank in the two services, would there be a difference in their pay and emoluments?
I think the Royal Naval Officer would receve the greatest pay and allowances.

1546. Earl of *Ellenborough.*] Has the batta given by the Indian Government to the Queen's Naval Officer any reference to the size of the ship he commands, or only his rank?
To the size of the ship, as well as to his rank; for a Captain commanding a frigate, receives a larger amount than a Captain commanding a steamer; at least I have always understood that to be the case.

1547. *Chairman.*] Have you met with any complaints, either from merchants, or from passengers, with respect to the accommodation for passengers or for goods in the steamers?
Yes, I have; but that was at a time when the mails were carried by very small steamers. I have not heard so many complaints since we have had vessels like the "Ajdaha," the "Moozuffer," and vessels of that kind.

1548. What is the average rate of speed of those larger vessels?
Between 9 and 10 knots.

1549. How is that, compared with the steamers of the Oriental and Peninsular Company?
The speed of the larger vessels in the Indian Navy, I think, is greater than that of the Oriental and Peninsular vessels.

Capt. F. T.

1st March

1550. Earl of *Ellenborough*.] Up to a certain period, the steamers of the Indian Navy had not sufficient horse-power for their tonnage?
Certainly not.

1551. You never got 10 knots an hour out of the "Tennasserim," did you?
I think not; but she did not belong to the Indian Navy.

1552. Nor out of the "Auckland?"
Nor out of the "Auckland."

1553. Viscount *Canning*.] Are not those vessels out of which you get an average of 10 knots, faster than the Peninsular and Oriental Company's boats, and built to carry heavy armament in case they should be required?
Yes.

1554. Do you believe that they would be competent to do service in war with a heavy armament, if occasion should arise?
They have, on several occasions.

1555. But yet they are able to make passages at the average rate of 10 knots an hour?
Yes, about that; but then they do not carry their heavy guns; they have only, perhaps, two 32-pounders on board.

1556. But the strength of the scantling, and the other necessary requirements for carrying heavy armament, does not incapacitate them from doing packet work at that speed?
Not in the least.

1557. Earl of *Ellenborough*.] Are they so built as to have a free current of air fore and aft?
No.

1558. It is in some of the Queen's ships, but not in all?
Not in all.

1559. Lord *Broughton*.] Suppose the Indian Navy were to cease to have any connexion with the mail or packet service, do you think that would be any detriment to its general efficiency?
Yes, I think it would; for I think there would at times be a want of occupation for the ships in the service.

1560. But would not the natural cure for that want of occupation be to make the Navy smaller?
It would; but then when their services were required, there would be no ships ready.

1561. But might they not lay the steam-boats up?
Then there would be considerable expense in paying the officers.

1562. Might not the part of the service required for war purposes be performed in that case by the Queen's Navy?
The duties might be performed by the Queen's Navy, no doubt, but the expense would be very much greater if they were.

1563. Lord *Monteagle* of Brandon.] Do you conceive that the packet service is as well performed when performed partly by the Indian Navy and partly by contract, as it would be if it were performed upon one continuous system, carried on by one enterprise?
I think it is much better to be conducted by two parties. If it were conducted solely by one, they would have such a complete monopoly in carrying the passengers, that it would be in their power to raise the amount of passage-money beyond what a great many of the junior officers returning from India could afford to pay.

1564. I can understand your observation, if there are two competing lines the whole way; but do you think that the benefits of competition can ever be attained by dividing one line between two parties; must not the power of monopoly exist in either of those parties just as much as if they had the whole line in their hands?
At present there are no two parties, that I am aware of, conveying the mails

Capt. F. T. Powell.

1st March 1853.

between Bombay and Suez; the Oriental and Peninsular Company convey the mails to Calcutta, but I am not aware that they convey any mails to Bombay.

1565. There are two steam communications, for instance, from Bombay to the southward?

Only one; they go from Bombay to Ceylon and China.

1566. If there be danger of monopoly, how is that averted by dividing the whole line of communication, say from England to Ceylon, or from England to China, into two parts, and putting a portion of it into the hands of the East India Company, and leaving the rest to the Peninsular and Oriental Company, or any other commercial company?

By the East India Company running packets, I think they have prevented the Oriental Packet Company raising their fares.

1567. How is it possible that the East India Company, running packets from Suez to Bombay, can prevent the effect of the monopoly which you apprehend as between Bombay and Ceylon or China?

But I believe the Oriental Company have started steamers to run from Suez to Bombay.

1568. In that case, is not the effect of their so running rather to break down a monopoly than to create one?

I think they put on those steamers in consequence of the immense number of passengers that come down the Indus from the Northern Provinces to Bombay.

1569. Therefore the two objections which occur to you against divesting the East India Company of any concern in the packet service are, first, the difficulty of finding employment for their own Navy without the packet service, and, next, this question of monopoly, which you apprehend would arise in that case?

Yes.

1570. Have you any other objection but those two?

None strikes me just at this present moment.

1571. Viscount *Canning*.] Would it not be an objection, in the estimation of the East India Company, that they should lose the 50,000 *l.* a year paid to them by the Government for this service?

I believe that the expenses which the East India Company are put to in carrying the mail very far exceed 50,000 *l.* a year.

1572. *Chairman*.] Then you think it would be an economy to them to have the whole performed by contract with a private company?

I think the East India Company would save by it, but at the same time they would destroy the efficiency of a service which at present does them a great deal of good in India.

1573. Viscount *Canning*.] Supposing this were to happen, that under a new contract with the Oriental and Peninsular Company the carriage of the mails between Suez and Point de Galle should be taken away from the steamers of the East India Company, and given to the vessels of the Oriental and Peninsular Company, but that the East India Company should still retain the 50,000 *l.* a year, with the obligation to run vessels, do you imagine that that state of things would be agreeable to the East India Company?

No; I do not think they would care to save the 50,000 *l.* upon those terms.

1574. Not if they were deprived of the carriage of the mails?

Not if they were deprived of the carriage of the mails.

1575. Would not the effect be, that there would be competition between their vessels and the vessels of the Peninsular and Oriental Company, and that they would probably leave so as to arrive nearly about the same time?

Yes.

1576. Do you think it would be agreeable to them to continue running their vessels upon the consideration of receiving 50,000 *l.* a year, coupled with the condition that they should be deprived of the mails, and thereby be deprived also of a certain number of passengers?

If the mails were taken from the East India Company, and transferred to the

Oriental and Peninsular vessels, there could be no object in the East India Company running their steamers between Suez and Bombay.

1577. They would therefore cease to do it?
I should imagine so.

1578. The 50,000*l.* would not be a sufficient inducement to them to continue to run them?
I should think not.

1579. Earl of *Ellenborough.*] Are the officers of the Indian Marine appointed in the first instance by the Court of Directors?
They are; they are called in this country volunteers to the Indian Navy; but immediately they arrive in India, they are designated Midshipmen, and before leaving this country they are sworn in to serve the East India Company faithfully and truly.

1580. Lord *Colchester.*] Are they taken from Haileybury college?
No; of late years, since steam has become the principal power in the service, nearly every Midshipman before he gets his appointment from the Court of Directors is obliged to attend at some of the large factories for several months before he leaves this country for India.

1581. Does he undergo any examination before he leaves this country for India?
I believe not; but he is obliged to furnish a certificate from some factory of his general knowledge of the marine steam-engine.

1582. Earl of *Ellenborough.*] Is there any subsequent examination in India?
Yes; he must pass an examination in seamanship, navigation and gunnery, before he can be promoted to be a Mate.

1583 Who are the judges of his qualifications
Generally Captains in the service.

1584. Lord *Broughton.*] Is there any Board of Examiners, or does the matter rest with the Superintendent of the Indian Navy?
The Superintendent of the Indian Navy has the ordering of the committee for their examination.

1585. Earl of *Ellenborough.*] In point of fact the officers are generally very good navigators, are they not?
I believe they are.

1586. *Chairman.*] Whence do you derive your chief supply of coal?
From England.

1587. One of the heads of service is the navigation of the Indus, what is the chief employment of the Indian Navy there?
For several years, until the Punjaub became settled, the vessels were almost exclusively employed in moving troops and military stores; but since the annexation of the Punjaub, in addition to these duties, they have carried merchandise, besides conveying passengers both up and down the river.

1588. Is it necessary to have them so employed, or would there be any means of getting those duties performed by private enterprise?
At the present time there is not a private steamer on the river; they are all the property of the East India Company.

1589. How far is the Indus navigable?
As far as Mooltan up the Chenab, and Kala Bagh up the Indus, at all seasons of the year.

1590. Would you think it impracticable to navigate higher up than that?
I think so, excepting during the inundation, as, from the peculiar nature of the soil, the whole of it being sand, is constantly liable to shift, and obstruct the channels.

1591. Earl of *Ellenborough.*] Has not one little steamer been up to Ferozepore once?
Yes, and one has been to Loodianah, and another up the Jailum, as far as that part of the river where the troops crossed over on their way to Peshawur, under

Capt. F. T. Powell.

1st March 1853.

General Gilbert; but the upper rivers will not admit of being navigated during the cold seasons.

1592. *Chairman.*] Are you acquainted with the Calcutta Marine force?

I served in the same fleet with them during the last Chinese war.

1593. Was there any inconvenience arising from the want of martial law?

Yes; I remember perfectly well Sir William Parker speaking to me upon that subject: he said, that, in consequence of their not being under martial law, there was no lawful means of punishing the men who misbehaved themselves in those ships, and on one or two occasions I believe they gave some little trouble on that account.

1594. Do you see any reason why the two services should be kept separate, and why they should not be assimilated with regard to their regulations, and put under one establishment?

If the Bengal Marine were to be embodied with the Indian Navy, I think that could not be done except with injustice to some officers of the Indian Navy; for, of course, many of the persons in command of those ships would not like to enter the Indian Navy, except as Commanders or Captains, according to the length of time they had served; and that, of course, would retard the promotion of the present Lieutenants in the Indian Navy.

1595 Earl of *Ellenborough.*] On the other hand, the number of vessels would be increased?

It would increase the service, certainly.

1596. Lord *Wharncliffe.*] Are there many officers of the Indian Navy on shore unemployed?

No, there is scarcely an instance known, except in cases of sickness.

1597. *Chairman.*] Are you generally satisfied in time of peace with the services of natives?

Yes, generally; the vessels are manned during time of peace with about one-third of natives and two-thirds Europeans.

1598. Do the natives amalgamate well with the Europeans?

Yes, very well.

1599. Lord *Monteagle* of Brandon.] Do any of the natives rise to the position of petty officers?

They always have petty officers among themselves, who are called Serangs and Tindals; the Serang is synonymous with the term "boatswain," and Tindals to "boatswains' mates."

1600. Are they appointed by the officer commanding the vessel, or are they selected amongst themselves for those positions?

The Serang is generally appointed from the Superintendent's office, and he recommends to the Captain of the ship the best men fitted for the situation of Tindals; should they turn out afterwards not to be fit for the situation, the Captain has the power of reducing them.

1601. And appointing another?

Yes.

1602. Generally speaking, how do those natives so employed in those capacities discharge their functions?

Generally, very well.

1603. Do you think they perform them as well, relatively speaking, as Europeans of the same class would in the Queen's service?

They have not the physical power that the European has.

1604. Earl of *Ellenborough.*] Has not the Chinese?

Some of the Chinese have.

1605. Have you Chinese on board?

Not in the Indian Navy, except as carpenters.

1606. Lord *Elphinstone.*] Have you ever had Malays?

We have had a few Malays mixed up with the natives of India; but we very seldom take Malays if we can get other Indians.

1607. Earl

1607. Earl of *Ellenborough*.] When the ships of the Indian Navy were ordered round from Bombay to the Irrawady, had you not to dismiss those natives, and to enlist Europeans in their place?
No; they are generally removed into other vessels in the service, and the Europeans in those vessels transferred into the ships required for active service.

1608. Then those vessels which had the Europeans taken out of them were mostly packet vessels?
Principally, I believe, and from other vessels.

1609. Are you aware that on the Calcutta side some of the vessels were reduced almost entirely to a native establishment?
I believe they were, very nearly.

1610. They would, then, have to recruit the whole strength of European seamen?
Yes; and at times European seamen are difficult to procure. I have heard of high bounties having been paid to them to join the Bengal Marine.

1611. *Chairman*.] Did Sir William Parker ever publicly express his opinion with respect to the services of the Indian Navy?
I believe he has done so by letter to the Governor General of India.

1612. Was it a very favourable opinion?
I believe so.

1613. Is there any other point connected with the Indian Navy upon which you can give useful information to the Committee?
Nothing further occurs to me at this moment beyond what I have stated.

1614. Earl of *Ellenborough*.] Have you in the Indian Navy, from that service being constantly carried on in a hot climate, adopted any peculiar modes not adopted in the Queen's vessels, for the purpose of facilitating the passage of air into the vessels, and making the service more healthy and more comfortable to the crews?
I think we use awnings more than is done in Her Majesty's service.

1615. You have a double awning?
Very frequently; and we pay great attention to wind sails.

1616. Have you punkahs?
Frequently, in the officers' quarters; but the space, generally speaking, in the men's quarters does not admit of them; in fact, the men generally prefer being on deck.

1617. But you generally have a double awning?
Very frequently.

1618. And very superior to any that are furnished in the Queen's ships?
They are both made of canvas. In the Indian Navy we invariably take them down at sunset; but we frequently, in fact invariably, spread them again at the time the men go to sleep: the consequence is, that we always allow our men to sleep on deck. I think that is one of the main reasons why the men in our service are, generally speaking, healthier than they are in Her Majesty's ships; there they have them between decks, and the men are obliged to take down their hammocks, and hang them up, and sleep in them; the consequence is, that they perspire most profusely, and they turn out at any hour of the night, and come on deck, with a heavy dew, and frequently get chilled, which I think very often brings on bowel complaints, and other diseases.

1619. Have you any means of forcing air into the body of the ship?
No, we have not.

1620. You never attempted that?
No.

1621. Lord *Elphinstone*.] Have you served much in the Persian Gulf?
Not of late years: the first five or six years of my servitude were passed in the Persian Gulf.

1622. What proportion of the Indian Navy is now employed in the Persian Gulf?

In general a sloop of war, with a brig and schooner; a steamer also visits the Gulf occasionally.

1623. Piracy no longer exists in that quarter?

We seldom hear of it now, as the time when instances most frequently happened was during the pearl fishery, and at that period vessels of the Indian Navy cruise on the banks for the purpose of suppressing it; still a few cases, I believe, do now and then occur.

1624. What is the season for the pearl fishery?

It commences about the 20th of May, and lasts through June, July and August, to about the 20th of September.

1625. Every year?

Every year during those hot months: in cold weather the divers cannot remain under water.

1626. Lord *Broughton.*] You still retain a few sailing vessels of small force in the Indian Navy?

I think there are about nine or ten altogether.

1627. Do you think it advisable still to retain those, instead of having more steam vessels?

I think if the East India Company had screw steam vessels in their place, they would be better than the sailing vessels.

1628. Earl *Graham.*] You spoke of the men sleeping on the deck in heavy dews; is not it imprudent to sleep on deck in heavy dews?

Not under awnings.

1629. Lord *Ellenborough.*] Have you ever seen the thermantidote?

Yes.

1630. Do you think it would be possible to apply that to forcing air into a ship?

I have no doubt it would be quite possible, particularly in a steamer, because it might be worked by the engine.

1631. Would it not be of great advantage to force an increased supply of air into the after-part of the ship where you have a complete bar across by the machinery?

I think it would; it would tend to make the vessel much cooler, and more healthy.

1632. Lord *Colchester.*] How do the officers of the Indian Navy rank with officers of the same grade of the Royal Navy?

Each grade is junior to the same grade in the Royal Navy: Captains of the Indian Navy rank below all Captains of the Royal Navy, and above Commanders of the Royal Navy.

1633. In acting together in the same service, would a Captain of the Indian Navy take the command of a Queen's ship commanded by a Commander?

I do not think he would, unless the vessel was placed under his orders; for when we act together, we are always ordered to place ourselves under the command of the Royal Naval Officer who may be the senior.

1634. Lord *Wharncliffe.*] Is there an ample supply of officers in the Indian Navy for the service of all the ships employed in time of war now?

No, I do not think there is, because we have been obliged to take a number of private individuals into the service to fill up vacancies: and the steamers on the Indus are every one commanded by men who, strictly speaking, do not belong to the service, but are volunteers from the merchant service.

1635. And they hold temporary Commissions?

They hold warrants as Masters and Second Masters.

1636. But, speaking of the higher grades of the regular service, would there be

Capt. F. T. Powell.

1st March 1853.

any persons serving under those circumstances in the regular line of the Indian Navy?
I do not understand this question.

1637. Then is there a sufficient supply of officers in the line for the service of the Indian Navy?
If the whole of them were present for duty in India, there would be quite sufficient; but, from the nature of the climate, numbers are absent on sick leave, and many are obliged to return to this country for the benefit of their health. This causes vessels which otherwise would be commanded by Captains or Commanders, to be commanded by Lieutenants, many of whom are of 20 years' servitude.

1638. In a time of war, like the present, is there not a larger number of ships in the Indian Navy in commission than there would be in time of peace?
No; nearly the same.

1639. In time of peace how would those ships which are now in active service be employed?
In moving troops' stores, and conveying the mails to Suez and Aden, besides various other duties.

1640. Earl of *Ellenborough.*] That is on the Bombay side?
On the Bombay side.

1641. Not on the Bengal side?
Not on the Bengal side: as an instance, there was a native regiment that had to be moved the other day, and, in consequence of those vessels being round at Burmah, they had no steamers available; the consequence was, the regiment was sent in native boats to Scinde.

1642. Was not that regiment nearly lost?
I believe so, and some nearly starved, from the report in the newspapers.

1643. Lord *Wharncliffe.*] Setting aside the packet service, which is at present performed by the Indian Navy, do you suppose that in time of peace there would be full employment for the total number of vessels which are now in commission in time of war?
Yes, I think there would.

1644. Principally in the conveyance of troops?
Troops and stores; and cruising in the Persian Gulf, Red Sea, and Coasts of Africa and Arabia, besides carrying on extensive surveys.

Do you consider that a necessary service
Yes.

1646. Is that omitted in time of war; have they a vessel there at present?
Not at present, on the African coast; still there are vessels in the Persian Gulf and Red Sea.

1647. Lord *Broughton.*] Is not it usual at Bombay that one or two tugs are employed regularly for the transport of troops and stores?
Strictly speaking, they have not such things as tugs in Bombay; but one of the old packet vessels was nearly rebuilt, and fitted as a transport: the vessel I allude to is the "Berenice," now employed in Burmah.

1648. Earl of *Ellenborough.*] The troops are all put forward in the vessel, are they not?
No; the "Berenice" has a regular troop deck, and when I have carried any, I have given them nearly the whole deck.

1649. What distance have you carried troops?
I have carried troops between Kurrachee and Bombay.

1650. That is a short passage?
Three or four days.

1651. How many have you carried, per ton, after deducting the space occupied by the machinery?
I think the "Memnon" carried on one occasion nearly a whole regiment to Kurrachee.

Capt. F. T. Powell.

1st March 1853.

1652. What disposable tonnage had she?
She was a registered 1,100 tons' ship, and I should think that at least 400 of that must have been taken for engines and boilers.

1653. About 700 tons disposable tonnage?
Yes.

1654. Then she carried about a man a ton?
Yes.

1655. You would not have carried so many for any considerable distance?
I think in India you might; it all depends upon the season; in the wet season decidedly not, because you could not give the men covering; but in the dry season a vessel of that kind might take a regiment to China, or to any part of India.

1656. If you carry troops, is not it absolutely necessary to have those awnings which you spoke of, that they may sleep on deck?
Yes; what I now speak of would be only in case of emergency, when other tonnage could not be procured; I have known an instance of one steamer taking a whole native regiment to Aden; if tonnage could have been procured, of course there would have been more employed.

1657. You have an enormous quantity of baggage to take when you take a whole regiment, have you not?
Immense; and on that account a long voyage could not be undertaken, as it might be very dangerous to the health of the troops. In going up the Indus, a flat and a steamer can take the wing of a European regiment.

1658. But the flat would take the largest number?
Yes: the steamer used to take 200, and the flat 300, with the whole of their followers, and the whole of their camp equipage, and provisions for 14 or 15 days; but then every evening the vessels pulled up at the river's bank, and the men went on the shore, and the natives slept on shore; only the Europeans slept on board the vessels.

1659. Lord *Elphinstone*.] Are not those steamers very large between decks?
They have no between decks; the flats have; but then they are generally filled with ammunition and camp equipage.

1660. Have you been up the Indus yourself?
Yes.

1661. How far?
I have been up to Ferozepore.

1662. You have not been up the Ganges?
No.

1663. You cannot compare the two rivers?
No, I cannot.

1664. How long were you going up the Indus?
With a flat in tow, about 18 days to Moultan.

1665. Did you experience considerable difficulties in navigating the vessels up the Indus?
Not much.

1666. Lord *Monteagle* of Brandon.] What draught of water had you?
About three feet four.

1667. Earl of *Ellenborough*.] Have you been in company with any officers who knew both rivers, both the Indus and the Ganges?
Yes. I have heard it said that the Indus shifts more than the Ganges; that the channel changes more suddenly at times than the Ganges; I have known the channel in the Indus to shift eight or nine feet in four and twenty hours, so as to leave only a few inches of water where it had been deep twenty-four hours before, the deep channel having shifted half a mile away.

1668. Do you provide against the difficulties by having more pilots there?
The pilots are stationed on the Indus about thirty to forty miles apart.

1669. In the Ganges they have pilots at every six or seven miles; if you had a pilot at every four or five miles, should not you be in a condition to know what changes have taken place in the channel?

I found those mentioned quite sufficient: there were always two at each station, one up and one down.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next,
Two o'clock.

Die Jovis, 3° Martii 1853.

LORDS PRESENT:

The Lord President.	Earl of Ellenborough.
Marquess of Salisbury.	Lord Colchester.
Earl of Albemarle.	Lord Wynford.
Earl of Powis.	Lord Stanley of Alderley.
Earl of Harrowby.	Lord Broughton.

THE LORD PRESIDENT in the Chair.

MR. ARDASEER CURSETJEE is called in, and examined as follows:

Mr. A. Cursetjee.

3d March 1853.

1670. *Chairman.*] WILL you state what situation you hold under the East India Company?
Chief Engineer and Inspector of Machinery.

1671. Have you any objection to state to the Committee what has been the object of your visit to this country and to the United States?
I am come to this country for the benefit of my health, upon sick leave, and I have visited the United States for the purpose of improving myself, and seeing what is going on.

1672. What acquaintance have you with the Indian Navy?
I hold a civil appointment under the department of the Indian Navy.

1673. Has your attention been called to the mode in which the packet service is performed by that force?
Yes.

1674. Complaints have reached the Committee that that service is not so rapidly performed as is desired by the commercial classes; is that the case?
There is some truth in that; but not exactly to the extent stated in the public papers; neither is the opinion held about those steamers quite correct.

1675. You mean that it is not a matter of fact that they performed the voyages so slowly as is stated in some of those papers?
No.

1676. From what you have seen in this country and the United States, what is your opinion with regard to the efficiency of the machinery used in the steam vessels in that service?
We generally use the same machinery as they use in America, as far as the sea steam navigation goes. The machinery of the sea boats in the Collins line and the Gunard line are nearly similar to what we use in India.

1677. Are the vessels you use in India as good?
The engines are every bit as good; some of them are made by the same men.

1678. Have you had any very large vessels lately added to the force?
Not very large lately; we have now under construction two very large vessels, about 700 horse-power, and 1,800 tons; they are now in progress of building. We had lately three new vessels of 500 horse-power, which are very fast vessels, and equal to any of the Peninsular and Oriental Company's boats that run in the Indian Seas.

1679. Have

Mr. A. Cursetjee.

1679. Have any vessels which had been carrying the mails hitherto been taken off this station in consequence of the Burmese war?
Yes, the best of them.

1680. Is not that inconvenient to the public service that the best should be liable to be taken off?
It is an inconvenience.

1681. Have you heard any complaints from the commercial classes of the difficulty of transmitting goods by those steamers?
Yes; I have heard some complaints made by individuals; but I have conversed with Mr. Allen, the chief director of the Peninsular and Oriental Company, and he told me that they have been running their vessels from Bombay to the Red Sea for more than 12 months, and that they have sustained considerable loss. They have discontinued that line now; so that I do not think there is a great deal of traffic going on in that line, although the merchants have complained.

1682. They send samples now, and not goods?
They send samples, I believe, and not goods.

1683. Earl of *Ellenborough.*] Where did you acquire the knowledge which qualified you for the situation of Inspector of Machinery?
In this country; I was here in 1839 and 1840.

1684. Where did you study?
At Messrs. Seward & Co.

1685. How long were you there?
A twelvemonth. I studied in Bombay, and learned my profession in the dockyard as a shipwright; and then I turned my mind to steam engineering at Bombay; and after finishing my education there, I came for a twelvemonth to England.

1686. Is the machinery ever manufactured in India?
We can manufacture it; but we have so much to do about repairs that we have no time.

1687. You can do any repairs?
We can do any repairs. We make new boilers there in everything.

1688. What is the comparison between the expense of building at Bombay and of building in England?
I do not know exactly the price in England; but as far as my knowledge goes, I think we build somewhat cheaper in Bombay than it is done in England.

1689. Lord *Elphinstone.*] Are not steam machinery and boilers much cheaper in this country than in Bombay?
I think we could make them equally cheap. The materials are very cheap, and the workmanship is not dear.

1690. Is not iron dearer?
To a very trifling degree.

1691. Earl of *Ellenborough.*] Whence do you get coals for your steamers?
From England.

1692. Lord *Broughton.*] Are you not aware that the Royal Navy have discontinued building ships at Bombay, in consequence of the greater expense of building there than at home?
No; with respect to the last vessel there was great complaint; but there was great discussion about it. It was not exactly the fault of the country nor of the wages. The vessel was seven years upon the stocks, and the rent of the slip and the cost of the ship altogether amounted to a very exorbitant sum.

1693. Earl of *Ellenborough.*] Did not the Admiralty limit the sum which was to be expended in each year?
Not that I am aware of. There was no limit that I know of.

1694. How many years was the "Meanee" building?
To the best of my recollection, upwards of six years; but two other ships of the same class were built in about two years and a half.

1695. Lord *Colchester.*] Do not the Government sometimes have the timber of the ship converted in India and sent home to be fitted?
Yes.

1696. Are the steam-vessels built in Bombay, and the machinery brought from England?
Yes.

1697. Earl of *Ellenborough.*] Do you build them all of teak?
Yes, but we do not use the Moulmein teak; we use the northern teak.

1698. Lord *Colchester.*] Can you state the price per ton which it costs to build a steamer, exclusively of the machinery?
I think it runs from about 30 *l.* a ton, complete and ready for sea.

1699. Did you build the boats which were sent up the Indus to form the bridge?
They were built by the master builder of the department in the same dockyard, but not under my control.

1700. You do not know the cost of those boats?
No.

1701. When you say about 30 *l.* "complete, and ready for sea," what do you include in that?
Masts, and yards and sails, rigging and everything, exclusively of the machinery.

1702. Supposing you exclude the stores and rigging, and take merely the hull, what would the cost be?
It would be about 25 *l.* a ton, about 5 *l.* cheaper.

1703. Would sailing vessels be about the same?
About the same, probably a little cheaper; if it were a merchant vessel it would be a little cheaper.

1704. Lord *Broughton.*] Are there many of your own countrymen employed in that department, either acting with you or under you?
There are not many in my department, but in the shipwrights' department there are a great many.

1705. Is there any other of your countrymen at the head of another department, in the same way as you are at the head of the machinery department?
Yes, my father is the master-shipwright in the same dockyard where I am the chief engineer. Our family have been at the head of the dockyard for the last 150 years, under the British Government.

1706. Lord *Stanley* of Alderley.] What are your duties as chief engineer?
To inspect all the machinery of the Company's vessels, to repair them, and keep them in proper order, and to superintend all the machinery belonging to the East India Company in Bombay.

1707. Is there anybody over you?
There is nobody over me in the practical part; the Commander-in-Chief of the Indian Navy gives his orders, and I act under him.

1708. *Chairman.*] Are you able to give the Committee any information upon the subject of the transport of troops and stores, and can you state whether or not that service could be conveniently performed by merchant vessels?
We cannot always depend upon merchant vessels; sometimes there are a great many vessels in the harbour, and sometimes there is a scarcity.

1709. Are you at all acquainted with the navigation of the Indus?
Only from hearsay.

1710. Piracy has been entirely put down there, has it not?
There is no piracy now in the Indian Seas, that I know of.

1711. Lord *Stanley* of Alderley.] Are most of the shipwrights employed in the dockyard at Bombay Parsees, or are they of different castes?
Parsees and Hindoos.

Mr. A. Cursetjee.

3d March 1853.

1712. Lord *Broughton.*] There are not many English?
No, not in the shipwright work.

1713. Lord *Stanley* of Alderley.] Are there many English employed in the dockyard?
A great many in the steam machinery, under me.

1714. Are there many artisans, who are Parsees, who are employed in the steam-machinery department?
Very few Parsees, but a great many Hindoos and Mussulmans.

1715. Earl of *Ellenborough.*] Are there any Chinese?
Very few Chinese, except occasionally as joiners.

1716. Lord *Elphinstone.*] Are there any Portuguese?
Yes, as joiners.

1717. Earl of *Ellenborough.*] Are there any private yards at Bombay?
There is only one, the Peninsular and Oriental Steam Navigation Company's Yard.

1718. Are there none for building merchant vessels?
No private yards.

1719. Where do they get their ships built?
They used to get them built in the Government dockyard. Small coasting boats they can build upon little places which they have there, but there is no regular building yard.

1720. Lord *Stanley* of Alderley.] Do you find the native smiths and persons employed in the steam machinery department as efficient as European workmen?
Quite so. The men who work as smiths, and the boiler-makers, are principally Hindoos.

1721. From what part of India do they chiefly come?
From Guzerat, and the northern part of Bombay.

1722. Earl of *Ellenborough.*] How many men are usually employed in the dockyard?
They vary very much; sometimes there are more than 2,000; but the number varies according to the work.

1723. As there are no private docks, and so little is done in the way of building at Bombay, except by the Government, have you the means of increasing your establishment quickly, in the event of a sudden emergency?
Yes; because when they have no work in the dockyard, the men go to house-building and joining, and little boat-building; some of them go to their own country, which is quite close, and when we want them we send for them.

1724. Lord *Colchester.*] Are there many merchant vessels built now at Bombay?
Not at present.

1725. Is there any other port at which they are built?
Yes, there is Damaun, a Portuguese settlement; and at Cochin, in the British territory, there is a fine ship-building yard.

1726. Earl *Powis.*] How many times a month do the packets start from Bombay?
Twice a month, the mail packets.

1727. How often has it happened, since you have been connected with the dockyard, that vessels have been obliged to put back by their machinery breaking in consequence of bad weather?
Only one instance that I recollect in eleven years from the actual breaking of machinery.

1728. Earl of *Ellenborough.*] But they have been obliged to turn back from other causes?
From stress of weather, or leakage of the ship; but that is very seldom; altogether I do not think there have been half-a-dozen cases in eleven years.

1729. Have

1729. Have they one uniform route?
No; they take a different passage in the south-west monsoon.

1730. But, according to the monsoon, there is the same route always?
Yes.

1731. How far do they go to the southward?
Some go two degrees north, some six degrees north, and so on

1732. Lord *Elphinstone.*] You said that the machinery of the steamers belonging to the Bombay Navy is equal to that of the Cunard and Collins lines; do you mean that it is equal in point of power relatively to the tonnage of the vessels?
No, I do not mean that; I mean that it is equal in the manufacture.

1733. But not equally powerful in proportion to the tonnage?
No.

1734. Earl *Powis.*] Are the mail packets all wooden vessels?
All wooden vessels.

1735. Earl of *Ellenborough.*] Are there any screw vessels?
No screws; there is only one screw belonging to a private company in Bombay.

1736. *Chairman.*] Do they carry guns?
Some of them carry guns.

1737. Earl of *Ellenborough.*] But only for signals?
They have a large swivel gun.

1738. *Chairman.*] Are there any iron vessels in the Company's service?
Small boats for river service; not more than one sea-going.

1739. Earl *Powis.*] How many boats are there for the packet service?
They generally keep five boats for packets running.

1740. Lord *Stanley* of Alderley.] Have you ever built any iron steam-boats at Bombay?
We have cut and lengthened many, but we have not built any.

1741. What is your opinion of them, are they better for service than wooden ones?
I do not think they are better for sea-going; but they are well adapted for river navigation.

1742. Earl of *Ellenborough.*] Are they more free from vermin?
They get crowded with barnacles, and it is requisite every two or three months to clean them.

1743. Are they more free from vermin within?
No; I think they are as full within of cockroaches, and all those things.

1744. Lord *Stanley* of Alderley.] Does the timber of the wooden vessels suffer much from the attacks of the ant?
Not the teak-wood.

1745. Is that the only wood that resists the attacks of the ant?
That is the only wood that resists them, I believe.

1746. Lord *Elphinstone.*] Do you use nothing but teak in the construction of the ships?
Nothing but teak.

1747. And poon trees for the masts?
Yes.

1748. Are they better than masts of Norway deal?
No; the deal are better, but the poon is used for cheapness.

1749. Earl of *Ellenborough.*] Was the "Auckland" built at Bombay?
Yes.

1750. Is not she a bad sailer?

Mr. A. Cursetjee.

3d March 1853.

She is a very good vessel, but she is a large vessel with small power; she is a 900 ton vessel, and 220 horse engine.

1751. Very narrow?
She is not very narrow in proportion.

1752. Lord *Elphinstone.*] Which kind of teak is the best, Malabar or Moulmein teak?
The Malabar is very superior to the Moulmein, but the best teak is the northern.

1753. What part of the country does that come from?
From Guzerat.

1754. Lord *Colchester.*] Is that grown upon a drier soil than the other?
Yes, I believe.

1755. Earl of *Ellenborough.*] What wood was used in building the boats sent up the Indus?
All teak.

1756. How much water did they draw?
I think about a foot or 13 inches.

1757. They were about 30 tons—1,000 maunds?
About that.

The Witness is directed to withdraw.

R. W. Crawford, Esq.

ROBERT WIGRAM CRAWFORD, Esquire, is called in, and examined as follows:

1758 *Chairman*] I BELIEVE you were at the head of a house at Bombay?
I was, some years ago.

1759. In that capacity did you become acquainted with the working of the Indian Navy, the Bombay Marine Force?
I had some opportunities of observing and forming opinions upon its working, in connexion with the interest in which I was more intimately associated myself.

1760. Is that with regard to the packet service?
The packet service.

1761. Earl of *Ellenborough.*] And the transport of goods?
I can hardly say the transport of goods, for in that respect it came very little in our way; in fact, the vessels of the Indian Navy are prohibited from carrying goods on private account.

1762. *Chairman.*] Was that a hardship to the commercial classes in Bombay, or would the difficulty of the transit across the Desert prevent the transport of goods by that line?
It was a hardship to some extent.

1763. What goods would you have sent by them; nothing but goods of great value, I suppose?
Mostly goods of value, that could afford to pay the rate of freight.

1764. Lord *Elphinstone.*] Opium?
A little opium might have been brought from Egypt to Bombay.

1765. Lord *Ellenborough.*] Did you ever send bullion?
Very little.

1766. Jewels?
Jewels were occasionally forwarded.

1767. *Chairman.*] Would those steamers have been allowed to carry bullion?
They would; upon some occasions they did; but the rate of freight charged for them was almost prohibitory; it was, in point of fact, cheaper to send bullion from Suez to Point de Galle by the vessels of the Peninsular and Oriental Company,

and

R. W. Crawford, Esq.

3d March 1853.

and to have the bullion transferred from Point de Galle to Bombay by the China line of that Company, than to bring it from Aden to Bombay.

1768. Lord *Ellenborough.*] How much did they charge per cent.?
I can hardly state that from recollection; it is six years since I left Bombay.

1769. *Chairman.*] Has not the class of vessels employed been improved since you left Bombay?
I understand they have been considerably improved.

1770. Have you any complaint to make of the speed with which those vessels have performed their voyages?
At the present moment the service is inefficient and unsatisfactory, as far as we have opportunities of judging here. I was on a Committee of the House of Commons two years ago, upon the question of the mail communication between this country and the Red Sea; one of the arguments that was used before the Committee against the carriage of the mails being entrusted to the East India Company was, that in cases of emergency or of war the best vessels which have been provided for carrying on this service would be removed; and that, it seems, is now the case, and the mails are at present carried by vessels which were considered, two or three years ago, to be unfit for the service, and which were then replaced by such vessels as the "Acbar" and the "Ferooz," which are now transferred to the service in Burmah.

1771. Till the breaking out of the last Burmese war, had you reason to complain of the speed?
No; the speed was increasing considerably.

1772. Lord *Elphinstone.*] Was it equal to that of the Peninsular and Oriental Company's vessels?
I think, in many instances, it was.

1773. Generally, was it so?
Generally.

1774. Earl of *Ellenborough.*] Have you ever sent goods up the Indus?
No.

1775. Do you know anything of any speculations of others up the Indus?
I know of none; the trade which would go up the Indus is almost entirely in the hands of natives.

1776. Lord *Elphinstone.*] Parsees?
Parsees and other natives.

1777. Earl of *Ellenborough.*] Why should that be so?
They can afford to do it cheaper.

1778. Are you aware of natives having sent the European supplies up the Indus to the camp at Ferozepore?
I have heard that they did so.

1779. They were European supplies coming from Bombay?
I heard so.

1780. That was in the infancy of the navigation of the Indus, before there were steamers upon it?
Yes.

1781. *Chairman.*] Are there any steamers up the Indus but those supplied by the Indian Navy?
None.

1782. Has the service of that force been quite effectual in putting down piracy in those seas?
Quite so.

1783. Earl of *Ellenborough.*] Had you any ships belonging to you?
I had several.

1784. How do you man them?
With Lascars.

R. W. Crawford, Esq.

3d March 1853.

1785. Who are properly Lascars; what part of the world do they come from?
I should define a Lascar to be a native seaman.

1786. From any of those parts?
From any part.

1787. Have you any Chinese as seamen?
Very few Chinese, except as carpenters, or as idlers; Chinamen will never go aloft.

1788. Did you build your ship and man it at Bombay, or in the East, or was it a ship from Europe?
I have owned several ships; some of them were built in England, and went to India; others at Bombay; I had three opium clippers built in England.

1789. Why did you not build them at Bombay or Calcutta?
We found it answer our purpose better to have those vessels built in England.

1790. Used not those opium clippers to make better passages than the steamers?
They hardly ever came into competition.

1791. Were they not very fine sea-boats?
They were very fine vessels.

1792. *Chairman.*] Did they sail with a British register?
All of them.

1793. Under the manning clause were you prevented from employing more than a fourth part of foreigners in manning your vessels?
We never had occasion to investigate the operation of the manning clause in the Act of Parliament, because our seamen were almost entirely Lascars; but if we had gone into the question very narrowly, we should probably have been beyond the limit of the Act, because a great number of the men employed as seamen are what they call Manilla men and Malays.

1794. Lord *Colchester.*] Are many of the Lascars men who are not natives of the East India Company's territory?
The Lascars, so called, are mostly native subjects of the East India Company; but there is a large number of men performing the duties of seamen in the shipping in the East who are Malays and Manilla men.

1795. Any Arabs?
No Arabs that I am aware of.

1796. *Chairman.*] For service in those parts in time of peace, are the Lascars as valuable as Europeans?
I should think they were; you require a greater number of Lascars, but you can victual them cheaper, and their wages are relatively cheaper.

1797. And they stand the climate better?
Yes, it is their own climate.

1798. Earl of *Ellenborough.*] How do they stand a heavy gale of wind?
I have seen them in a gale of wind behave exceedingly well.

1799. Do they go aloft?
Yes, as readily as European seamen.

1800. Are the subordinate officers Malays also, or are they European?
In the country ships, as they are termed, there is the captain, and there are two, three or four European officers, according to the class of vessel, and a gunner and carpenter; the rest of the crew are a mixture of Lascars, and those Malays and Manilla men.

1801. Then you sail them cheaper, in point of wages, than if you had European crews?
In point of wages per head; but you require to have a much greater number.

1802. Lord *Colchester.*] Are they hired individually, or under a serang?
They are hired under a serang, and that is the objectionable feature in the system.

1803. Earl

R. W. Crawford, Esq.

3d March 1853.

1803. Earl of *Ellenborough.*] Are the native vessels from the Persian Gulf, that come to Bombay, manned by Arabs?
They are owned, commanded and manned, in a very great measure, by Arabs.

1804. Are they good seamen?
I am not able to answer that question.

1805. How happens it that you have never engaged Arabs as seamen, as well as other natives of the East; is there any indisposition to employ them?
I imagine it is because they have not offered themselves for service.

1806. Lord *Broughton.*] Are there not many of them afloat in the Persian Gulf, and in the Red Sea?
Yes.

1807. Earl of *Ellenborough.*] Are any of the serangs Arabs?
The serangs are generally men of the same caste as the seamen themselves.

1808. Have there not been several vessels burnt in the harbour of Bombay?
A very great number.

1809. To what do you attribute that?
In some instances to accident or spontaneous combustion, I think; but in the majority of instances to incendiarism.

1810. To what cause do you trace the act of the incendiary; what inducement was there to the commission of that deed?
In one or two instances, I think, we traced it at the time to a revengeful feeling on the part of the Lascars on board the vessel; but in almost every other case, it was attributed to the instigation of the Serangs, not the Serangs of the ship, but the Ghat Serangs, the crimps.

1811. What reason had they to procure the burning of the ship?
The custom of the Port of Bombay compels the shipowner to pay a large advance before the vessel can get away. Those advances are paid into the hands of the Serangs, and the Serangs induce the men to set fire to the vessel; and by that means they have them available again for another service, pocketing the money they have received.

1812. Does not the Serang give security when he receives this money in advance?
The only security that I recollect his giving was, that the men for whom he received the advance should be shipped on board the vessel.

1813. What measures have been adopted to put an end to so sad a practice as that of burning ships in harbour?
A committee was appointed by the Bombay Government, during the time I was there, of which the Advocate-general was the President. A great deal of time was bestowed by that committee upon the investigation of the subject, and it resulted in certain recommendations being made to the Supreme Government, with a view to the general improvement of the system. An Act was drafted for the purpose of carrying out those recommendations; but the Act was sent up to the Supreme Government by the Bombay Government, and it was then, as far as we were concerned in Bombay, entirely lost sight of.

1814. How long ago was that?
I should think 12 years.

1815. Have there not been many recent cases of burning ships at Bombay?
A few. They almost all occurred about the same time.

1816. Surely within the last few years there have been several instances, and at Calcutta also?
There have not been many cases of vessels burnt under the circumstances to which I have alluded at Bombay, within the last five or six years.

1817. And at Calcutta, have there also been instances?
There have been one or two cases at Calcutta.

1818. Was there not a similar committee formed at Calcutta, for the purpose of devising some means of preventing it?

R. W. Crawford, Esq.

3d March 1853.

I have been informed that there was a committee; but I was a member of the Bombay committee myself, and therefore I can speak better as to that.

1819. What were your recommendations?
I can hardly carry them in my mind at the present moment.

1820. Do you think they would be efficient, if adopted?
I was of that opinion myself very strongly.

1821. How did the men manage to escape when the ship was on fire?
The Lascar is partly an amphibious animal. The ship lies not very far from the shore, and lies among 40 or 50 other vessels, and there is no difficulty in the Lascars finding their way to the shore under those circumstances.

1822. Were any other vessels, at any time, burnt in consequence of those being set on fire?
I do not recollect any case of that kind.

1823. Lord *Broughton*.] Do you think that the mail packet service ought to continue to be performed by the Indian Navy?
Certainly not.

1824. If the Indian Navy did not perform that service, do you think there would be some danger of a monopoly falling into the hands of any great company, such as the Peninsular and Oriental Company?
I think that it might be the case at the present time; but a year ago, the Government had the power of meeting that objection—at the time the contracts were thrown open—but the opportunity was foregone.

1825. But on other grounds, you have no doubt of the expediency of discontinuing the present practice of the mail packet service being performed by the Indian Navy?
As far as the public interests are concerned, I have no doubt whatever, in my own mind.

1826. Earl *Powis*.] Are there now any packets belonging to the Peninsular and Oriental Company running to Bombay, competing with the mail packets?
No; the mail services are at present carried on by the Peninsular and Oriental Company, between Suez, Ceylon and Calcutta; but the East India Company has the regular communication between Suez and Bombay on its hands.

1827. Are there any vessels belonging to the Peninsular and Oriental Company that run from Suez to Bombay?
There are.

1828. How often do they run?
The arrangements of the Peninsular and Oriental Company under the new contract commenced on the 1st of January; and I understand that application has been made by the Company to be permitted to postpone entering upon the second monthly mail, and until that is decided, I believe one is hardly able to say what the present arrangements actually are.

1829. Lord *Colchester*.] They commenced last January?
Yes.

1830. Earl *Powis*.] Before that time, were the mail packets the only steamers running between Suez and Bombay?
The mail packets of the East India Company, and an occasional vessel of the Peninsular and Oriental Company.

1831. *Chairman*.] I understand you to state that your chief objections to the employment of the Indian Navy for the purpose of carrying the mail are, first, the grievance of not being able to send goods by them; and secondly, that in time of war the service is liable to be interrupted by the best vessels being taken away for war purposes?
Those are certainly two of the chief objections. We, the mercantile interests here, object to the Government being charged with the performance of that duty.

1832. Otherwise, in times of peace, is the service well performed?
It has been getting better of late; but it can hardly be said to have been well performed, in point of speed and of accommodation to the passengers, till about

the

R. W. Crawfor
Esq.

3d March 1853

the commencement of last year, when the large class of vessels to which I before alluded were brought into use.

1833. Lord *Elphinstone*.] Is not the accommodation to the passengers very inferior in the ships of war to that in the steamers of the Peninsular and Oriental Company?
Most inferior, indeed.

1834. Lord *Broughton*.] Do you think it is desirable that the mail packet service should be kept in the hands of the East India Company, or that it should be transferred to a mercantile body?
I would much rather see it in the hands of a mercantile body, provided the public were secured against the effects of the monopoly which would then exist.

1835. You think there would be no means of preventing its becoming a monopoly?
Not at the present time; because a contract was entered into last year by the Government with the Peninsular and Oriental Company, which commenced on the 1st of January last.

1836. *Chairman*.] Have you ever considered and formed any opinion upon the question, whether any of the other services performed by the Indian Navy would be as well performed by ships in the Queen's service?
I have no doubt they would be quite as well performed.

1837. You think that there is no advantage in having a strictly local force?
There may be advantages; possibly there are some advantages.

1838. With regard to the Indus navigation, how could that be performed?
I can only speak of that from hearsay; I have known some officers who have been employed upon the Indus; well acquainted with some of them; I have been led to form opinions very favourable to their character for energy, and skill and enterprise.

1839. Lord *Elphinstone*.] Are you acquainted with Captain Powell?
I know Captain Powell, personally, very well.

1840. He was in charge of the Indus flotilla lately?
He was, for some time.

1841. Lord *Broughton*.] Do you know Lieutenant Ethersay?
I do.

1842. Earl *Powis*.] What saving of time in the communication with Bombay do you imagine would be practicable, if commercial steamers were employed instead of the present mail packets from Suez to Bombay?
I find by advices which I received yesterday, that the vessel which took the mail from Aden to Bombay was 14 days upon the passage; the distance is, I think, 1,650 miles. Now, at the rate of 12 knots an hour, that voyage would be performed by a powerful vessel in a very much shorter space of time; and my impression is, that a vessel of that kind would always be found in the employment of a company whose interest consisted in carrying passengers and mails at a high rate of speed.

1843. Do you imagine that the rate of 12 knots an hour could be maintained as an average?
Perhaps not as an average; but I have not the least doubt that 11 could.

1844. Do you suppose that the rates paid by the passengers would be reduced, or that much better accommodation would be given?
I doubt whether the rates of passage would be reduced, unless, as I before observed, you had some competition in the service.

1845. Is it likely that sufficient trade would go that way to maintain two companies in competition with one another?
I think not at the present moment, because there is not sufficient inducement for another company to offer its services to the public. A year ago, when another company was in existence, and they offered terms to the Government for the performance of the service, in combination with the Peninsular and Oriental Company, it might have been done; but now I take it that no company could

R. W. Crawford, Esq.

3d March 1853.

incur the expense of formation, the success of the scheme depending entirely upon their getting a contract with the Government.

1846. Lord *Elphinstone.*] Your scheme was for having the service performed alternately by the Peninsular and Oriental Company and that other company?

It was so. Under the old contract with the Government, the service was performed once a month by the Peninsular and Oriental Company; and the new company, which was called the Eastern Steam Navigation Company, proposed that the service should be doubled, that there should be a service every fortnight; and they proposed to undertake one of these services, and to leave the other as it was, in the hands of the Peninsular and Oriental Company; but the contract was so arranged, that tenders might have been sent in for either the whole or a part by the two companies, who were then understood to be competing for that service, but it ended in the Government of the day giving the whole of the service to the Peninsular and Oriental Company.

1847. Was not the tender of the Peninsular and Oriental Company much lower than that of the Eastern Steam Navigation Company?

That is a vexed question. I happened to be Chairman of the Eastern Steam Navigation Company, and we maintained at the time, and maintain now, that our offer was practically cheaper than the other, for one service in the month.

1848. *Chairman.*] Are there any suggestions, which have not been extracted by the examination, with reference to the Indian Navy, which you think you can make with advantage?

I was not aware till this morning that I was likely to attend here as a witness to-day, and I have not been able to give the subject that consideration which I should otherwise have done; therefore I had better say that I am not prepared to make any suggestions.

1849. Earl of *Harrowby.*] Had you occasion, when you were in India, to consider the subject of increasing the supply of cotton?

Yes, a great deal of occasion.

1850. You went into it as a practical merchant?

I did.

1851. What, in your opinion, was the principal obstacle to the increase of the supply?

My opinion, as regards the supply of cotton from the interior of the country, by which I mean the Deccan and the Berar country, was, that the great obstacle was the imperfect system, or rather the want of any system at all, of inland communication.

1852. At present the carriage is by bullocks, is it not?

Entirely.

1853. Can you have any idea of the proportion of the price paid at Bombay which would be due to the carriage?

I am unable to state it at this moment, but I can very easily refresh my memory, for I happened to be a witness before a Committee of the House of Commons which sat upon the subject in 1848; I was examined at considerable length at that time, and I went into a great deal of minute detail upon that subject.

1854. Had you given much attention to the subject while you were in India?

Before I left Bombay, in the year 1846, I prevailed upon the Government to issue a Commission for the purpose of investigating the subject, which was done; and, to a very great extent, I worked it myself: I myself prepared a great part of the report, which was eventually presented to the Bombay Government, and published as a Parliamentary Paper, by Order of the House of Commons, in 1847.

1855. Is the whole of what you would have to offer upon this subject comprised in that document, which is already before Parliament, or have you any additional information?

I can hardly say that I have much additional information to offer.

1856. Nothing has happened since which has modified your impressions, or added materially to your information upon the subject?
Nothing.

R. W. Crawfor
Esq.

3d March 1853

1857. Do you look with anxiety to the extension of railway communication in the direction which it is now taking in Bombay?
I do: I think that when railway communication is extended into the cotton districts it will open up an immense source of supply, and it will enable the cotton of India to compete very successfully with the cotton of America.

1858. You reckon that the expense of carriage is the principal drawback to the Indian cotton?
Yes; I went, upon the occasion to which I have referred, into considerable detail as to the proportion that the expense of carrying cotton down from the interior to Bombay bears to the whole value; and I am perfectly satisfied that if we had the means existing for bringing cotton down speedily and cheaply without its being subject to the deterioration which it now undergoes, there would then be an inducement to the cultivators of cotton in the interior to prepare it for the Bombay market to an extent which does not exist now at all.

1859. Lord *Colchester.*] Is the quality of the Indian cotton as good as the American?
No, the quality is not so good.

1860. Lord *Elphinstone.*] Is not the mode of preparing it very inferior to the American?
It is: it arises from there being no such constant demand for the Indian cotton here as there is for American cotton, because the price of cotton from India is always ruled by the price of American cotton.

1861. Earl of *Harrowby.*] Have you any doubt that if there were greater facility of intercourse with the interior of the country by railway, other improvements in the cultivation of the cotton would naturally follow?
I have not the least doubt of it. I may illustrate that by reference to an article which has now become a very important article of commerce in India, that is linseed: I recollect several years ago purchasing a large quantity of linseed; I sent it to Hull; it paid very well; but out of the whole cost of it on board ship at Bombay, about from 30 to 40 per cent. was the expense of bringing it from the interior.

1862. Would not the per-centage be still higher with regard to cotton from Berar?
I cannot say the exact proportion at this moment.

1863. *Chairman.*] When you say that the expense of bringing it from the interior was 30 to 40 per cent. upon the cost, was that upon the whole cost of bringing it to Hull or to Bombay?
To Bombay.

1864. Marquess of *Salisbury.*] How much would it be upon the cost to Hull?
That must be in a great degree variable, because the rates of freight from India to this country vary so much.

1865. Lord *Elphinstone.*] The East India Company sent some American cotton planters to the cotton districts of India, with the view of teaching the natives to cultivate and clean it much better than it used to be done; do you know whether any success has attended that experiment; is there a better kind of cotton prepared now?
A better kind of cotton has been prepared, no doubt.

1866. Earl of *Ellenborough.*] Do you mean that the cotton is better prepared, or that a better sort of cotton is produced?
Both.

1867. What machine do they use for cleaning the cotton now?
The churka, generally; the old common churka.

1868. Lord *Broughton.*] Do not they use the American gin now?
The American gin has been introduced to a considerable extent; I myself imported a considerable number from a first-rate manufacturer in Philadelphia.

R. W. Crawford, *Esq.*

3d March 1853.

1869. Earl of *Ellenborough.*] Did you distribute them over the country? The Government took them off my hands.

1870. What number of them were there?
I should think there must have been from 20 to 30 at different times, of various sizes; some for use by the hand, and others by animal power.

1871. Were any manufactured in India from those models?
I do not know.

1872. Lord *Stanley* of Alderley.] Do you think they were an improvement on the native machine for cleaning cotton?
A great improvement; no doubt of it.

1873. Earl of *Harrowby.*] Have you considered whether it would be worth while for the Indian Government, having no surplus, to borrow money for the purpose of improving the internal communication?
Speaking in a general way, I should think it would be.

1874. At what rate of interest could they borrow money?
It depends upon whether they borrow it in India or here; if repayable in this country, they could borrow it here at 3½ per cent.

1875. And you believe that it would remunerate them well to improve the internal communications, borrowing money for the purpose at the rate of 3½ per cent.?
I have no doubt that it would in the long run.

1876. If they borrowed it in India, at what rate of interest would it be?
Taking the last quoted prices of their loans in India, they could borrow it at a rate very little above 4 per cent., say 4¼.

1877. Do not you believe that it would pay them 10 or 20 per cent. to institute improvements in the internal communication of the country?
I cannot say what it would pay them, but I have no doubt it would lead to a very large accession of revenue.

1878. Have you ever gone into the interior, to parts of the country where you have been able to see the effect produced by irrigation?
No.

1879. Earl of *Ellenborough.*] The India cotton which is imported is now very inferior to the American cotton?
It is inferior to the American cotton.

1880. It bears a much lower price in the market?
It does; but still I believe that, taking the average of the cotton that is imported from India, it is of sufficiently good quality to produce material for at least one-half of the yarn spun in this country.

1881. Earl of *Harrowby.*] Is there not a large demand of cotton for inferior purposes?
There is a very large demand for cotton of that quality.

1882. Marquess of *Salisbury.*] But it does not supersede the American?
No; I suppose it never will supersede the American.

1883. Is the difference owing to climate or to soil?
Probably to both.

1884. Earl of *Ellenborough.*] Have you ever seen the cultivation of cotton in the most approved manner?
I have never seen cotton under cultivation.

1885. Does it come now to Bombay in a very dirty state, full of dust?
I have seen it come in all sorts of states. That which comes from the Deccan is brought upon bullocks' backs in one string, consisting of several hundred bullocks, every one with his nose upon the end of his predecessor's cotton bag, eating its contents, and at night those bags are thrown off the beasts' backs, and they lie exposed to the dews, rolled in the dirt and dust, and collecting all manner of dirt.

R. W. Crawford, *Esq.*

3d March 1853.

1886. What do you do with them when they arrive at Bombay; do you clean them or send them home in that dirty state?

The cotton-bags are brought to Bombay, and are piled upon what used to be called Bombay green; the purchasers of cotton purchase it, of course, by samples; they select the cotton from the sellers' stocks upon the green, according to the samples; the cotton is then carried into the screw-houses, where it is packed, under the superintendence of the servants of the buyers, who are of course enjoined by their masters to take care to separate the good from the bad, and to pack it accordingly.

1887. Is not it subjected to very severe pressure in order to make the package as small as possible?

Very severe pressure.

1888. Does not that injure the fibre?

It has been said to do so.

1889. Earl of *Harrowby.*] If the cotton were clean, the injury from the pressure would not be considerable?

No; after all, it becomes a question of expense; you may deteriorate the quality to a certain extent, by applying that extreme pressure to it, but you effect a much greater saving in the expense of bringing the cotton to this country.

1890. Lord *Stanley* of Alderley.] In re-packing the cotton is there any attempt made to clean it from any of its impurities?

Yes, a great deal of attempt is made, but not in a minute way; it is only done in a very general way, that is to say, such things are removed from it as the hand can take.

1891. Earl of *Ellenborough.*] Would it not be advisable to clean it thoroughly with a saw-gin, so as to send it to England in a perfectly pure state, in which it would occupy much less space, and not be injured by pressure?

As in the former case, it becomes a question of relative cost; it may be cheaper to ship the cotton to this country in times of low freights, and to trust to the superior skill and machinery of this country to clean it here.

1892. Have you ever seen the cotton under the process of being cleaned?

I have, but more as an amateur than any thing else.

1893. Have you ever seen any cotton which had been cultivated with great care in a garden, and have you seen the produce of that cotton?

I have grown it myself under those circumstances.

1894. What price has that cotton fetched in the English market?

I have sent it home here, and it has borne a fanciful price.

1895. Has it not borne as good a price as the American?

Quite.

1896. Marquess of *Salisbury.*] Is there not some peculiarity in the American cotton which does not belong to the Indian cotton?

In some kinds of American cotton there is; in the case of Sea Island cotton its quality is referable to certain considerations connected with the climate, the soil, and the atmosphere of the Sea Islands upon which it is grown.

1897. Earl of *Harrowby.*] Is it not the fact that it is only a small proportion of that superior quality which is required for the market?

A very small quantity indeed.

1898. Earl *Powis.*] What distance has the cotton to travel to Bombay?

From 300 to 400 miles.

1899. How long is it usually on the journey?

About three months.

1900. At what portions of the year can it be carried, owing to the state of the roads, and the floods, and the streams?

The cotton in the Deccan attains maturity about the month of January. The periodical rains, which prevent all communication of that kind in the interior, set in at the latter end of May, so that that throws the whole carriage of the cotton

R. W. Crawford, Esq.

3d March 1853.

intended to serve the market for the year, into the three months between January and May.

1901. Is any portion of that 300 miles of road practicable for wheeled carriages?
I believe a carriage-road has been made over a very considerable portion of it.

1902. Earl of *Harrowby*.] Do you suffer any inconvenience from the practice of the East India Company of making advances upon the hypothecation of goods?
I can hardly say that I have suffered personal inconvenience from it, but I have, in common with others, shared in the prejudicial effects upon commerce generally which that course has engendered.

1903. Do you conceive that the practice is now upon a satisfactory footing in that respect?
Quite so; I think it cannot be upon a better footing. The East India Company now inform the commercial public at a certain time of the year what their financial wants are likely to be in the course of the year, and they intimate that it is their intention to supply themselves with funds by drawing upon India during the course of the following year.

1904. Are you aware whether the East India Company has suffered any inconvenience from any combination against it to lower the price of exchange?
Very far from it; during the last year that has passed to the present time, the Company have been receiving a very high rate of exchange.

1905. Earl of *Ellenborough*.] Have you ever remitted bullion to England?
I have sent a great deal of bullion both ways; both from India home, and from this country to India.

1906. At how much per cent. can you remit it, including interest, freight, and every charge?
It would cost about four per cent., all charges paid.

1907. Earl *Powis*.] What is the character of the country from the Deccan to Bombay; it is level, so that a railway might easily be laid down over it?
The Deccan is an elevated tract of land about 1,800 to 2,000 feet above the level of the sea; its highest point is upon the summit of the Ghauts, which run parallel to the western shore of India, at a distance of 50 to 100 miles, and all traffic between the coast and the Deccan has to pass over this range of Ghauts.

1908. Earl of *Ellenborough*.] The best cotton comes from Oomrawatee, does it not?
Not the best cotton brought to Bombay, but the best cotton from the Deccan.

1909. Lord *Elphinstone*.] Which is the best cotton brought to Bombay?
That which comes from the Guzerat districts.

1910. Where was the experimental American farm?
The Company had an experimental farm in the neighbourhood of Broach; they had also a similar establishment in Candeish, and another in the southern Mahratta country.

1911. Lord *Stanley* of Alderley.] What success did they meet with?
They have sent home some very fine samples of cotton; but the financial results of the expenditure I have no means of stating.

1912. But as proving the possibility of producing a fine sample of cotton, in India they completely succeeded?
Yes.

1913. Lord *Broughton*.] Have not those experimental farms been abandoned?
They have.

1914. Lord *Stanley* of Alderley.] Has the mode of cultivation which they pursued induced any of the natives to follow similar methods?
I am afraid not.

1915. *Chairman*.] Is the cotton an uncertain crop?
No, it is not an uncertain crop; it is affected by the frost very easily. I remember in the cold weather of 1835, there was a very severe frost, which destroyed the greater part of the cotton crops in the Guzerat district.

1916. Lord *Ellenborough.*] Your chief export of cotton is to China, is not it?
It varies very much; I dare say that upon the average as much is sent to China as to this country.

1917. Is not more sent to China?
Sometimes I have known the greater part of the season's export go to China, and sometimes I have known the greater part of it come to England.

1918. Does not the inferior cotton suit the China market?
No; I think it is rather the reverse; it is the better kind of cotton that suits the China market.

1919. But you are now literally importing into this country a cotton which sells at a much lower price than the American, because it is dirty, and has been badly cultivated, and for no other reason?
Those are two very considerable reasons why it is so.

1920. Earl of *Harrowby.*] Would not the native get a better price for his cotton if less of the price which it fetches at Bombay were consumed in the transit?
Undoubtedly.

1921. *Chairman.*] Who finds the money for the land-carriage in India; do you buy it when arrived at Bombay?
We generally buy it on the spot in Bombay. In the case of the cotton from Guzerat, the carriage is of no account at all; it comes by boat a distance of 250 miles, and it is conveyed at a very insignificant cost.

1922. Is there an intermediate dealer between you and the grower?
There are half a dozen people between the grower and the buyer.

1923. Earl of *Ellenborough.*] Have any Europeans established themselves in the interior, in the same way that the indigo planters have done, for the purpose of cultivating cotton?
No, that has not been the case.

1924. Is not the Guzerat cotton better than the Oomrawatee?
It is a better cotton.

1925. Is it not supposed that better cotton may be raised near the coast than anywhere else?
It has been tried with considerable success in gardens.

1926. Is it not supposed that the Indian cotton, properly cultivated, is better cotton than the American cotton cultivated in India—that it suits the climate better?
I have heard practical people say so.

1927. Lord *Elphinstone.*] Is the staple of the Indian cotton as long as that of the Sea Island cotton?
No.

1928. Does not that make a considerable difference in the price?
That is not an important point; the staple is of very little consequence: you may have a staple too long as well as too short.

1929. Lord *Wynford.*] But not for the very fine numbers?
No; the very fine numbers require a long staple.

1930. Earl of *Harrowby.*] Are not the very fine numbers in very limited demand?
They are in very limited demand, as compared with the coarse.

1931. Earl of *Ellenborough.*] Do not you think that to improve the cotton cultivation of India, so as to be able to bring it here of a quality and at a price equal to the American, and thus practically to supplant a large part of the American supply of cotton, is one of the most important objects that can be aimed at?
I have no wish myself to supplant the American commerce in cotton with this country, because it would re-act upon us; but I think there is abundant room to raise a large quantity in India, and to bring it to this country, in addition to the American supply.

1932. Would

R. W. Crawford, Esq.

3d March 1853.

1932. Would it not be of great importance to us to be independent of America for the supply of cotton?
It would be most important, for some considerations.

1933. *Chairman.*] Do you believe that any supply of cotton from India that can be imagined would be taken up, and consumed in this country?
I believe that any quantity of cotton, of a suitable quality for the consumption of this country, that India could send, would be taken; of course at a price.

1934. Lord *Broughton.*] Are you not aware that there are several persons who have applied their minds to this subject, and who do not think that the cultivation of cotton in India is of the very great importance which is generally ascribed to it?
I am quite aware that there are some persons who entertain those opinions.

1935. Marquess of *Salisbury.*] Do you know anything about Egyptian cotton?
Very little; I have seen it here.

1936. Is it likely to come into competition with the Indian?
There is a very large supply of Egyptian cotton here.

1937. Is it better prepared than the Indian?
It bears a higher price here, in consequence of the superior quality.

1938. Earl *Powis.*] Would the cotton cultivation be very profitable to the occupier of the soil in India; would it be more profitable than other kinds of cultivation?
In the Deccan there are very large tracts of land which are now uncultivated, and which are quite capable of producing good crops of cotton; and if the cultivators of the cotton grown there had the power of sending it down to Bombay, I have no doubt they would derive very great benefit from it; but in the case of Guzerat, where the whole of the land has been under cultivation for a series of centuries, I doubt whether the growth of cotton can be extended there, because it takes its place with a variety of other products in the rotation of crops.

1939. How long does the Indian cotton plant last?
I think it is an annual plant.

1940. Is it grown always on the same ground, or in rotation with other crops?
I cannot speak very practically upon the subject; but my impression is, that it is grown by rotation, and that upon each ground another crop is grown with it.

1941. Do you know how often the cotton crop comes in the rotation?
I think it is every second year.

1942. Lord *Stanley* of Alderley.] Are you at all acquainted with the cultivation of sugar in India?
Not at all. Perhaps one of the best authorities upon the cultivation of cotton in India is Colonel Monier Williams's Report on the Zillah of Broach, made to the Bombay Government on or about the year 1817.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday,
Two o'clock.

Die Martis, 8° Martii 1853.

LORDS PRESENT:

The LORD PRESIDENT.	Lord ELPHINSTONE.
Marquess of SALISBURY.	Lord COLCHESTER.
Earl of ALBEMARLE.	Lord WHARNCLIFFE.
Earl GRAHAM.	Lord WYNFORD.
Earl POWIS.	Lord ASHBURTON.
Earl of ELLENBOROUGH.	Lord STANLEY of Alderley.
Viscount CANNING.	Lord MONTEAGLE of Brandon.
Viscount HARDINGE.	Lord BROUGHTON.
Viscount GOUGH.	

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

Rear-Admiral Sir Thomas Herbert, K. C. B.

8th March 1853.

REAR-ADMIRAL SIR THOMAS HERBERT, K.C.B., a Member of the House of Commons, is examined as follows:

1943. *Chairman.*] YOU have commanded in the Indian Seas?
I was in the Indian Seas, and had a detached command there in China.

1944. During that time had you any opportunity of becoming acquainted with the Indian Navy?
During the two years I was there, I had frequently some of their vessels under my orders, and was in company with them.

1945. As Chairman of this Committee, I communicated with Sir William Parker on the subject of the Indian Navy, but, owing to some private reason, it is inconvenient to him to attend here as a witness; he stated to me that he had had a portion of the Indian Navy under his command during the China war, and that he found them very gallant and very willing; that he had abstained from any examination of their internal administration; but that if the question were put to him, whether he considered them as efficient as the naval force in Her Majesty's service, perhaps, owing to a prejudice in favour of the force to which he himself belonged, he should say that they did not reach that standard; is that your own opinion, or not?
As to their reaching that standard, that is merely matter of opinion; the vessels that happened to be under me were small vessels; there was not anything very large; the "Acbar" was one of the largest, and there were the "Auckland," the "Queen," the "Nemesis," and the "Madagascar;" those were vessels of about 700 or 800 tons, mounting from two to six guns; those vessels, when they went into action, I found to be effective in every way; they were most active and most zealous, and on every occasion I felt great confidence in them, as much almost as I would in a vessel of the same power belonging to ourselves.

1946 Did any jealousy at all exist between the officers of that force and the officers of Her Majesty's service?
Not the least, as far as we were concerned; between the Queen's forces and the Company's forces there appeared to be none, as far as concerned the vessels immediately under me; I found a willingness on the part of the Company's officers to be placed under our orders.

1947. Earl

Rear-Admiral Sir Thomas Herbert, K. C. B.

8th March 1853.

1947. Earl of *Ellenborough.*] They naturally felt proud at serving with the Royal Navy, and were desirous of showing they were worthy of it?

Yes; there was a perfect good feeling; they said, "We are delighted to be under you; only tell us what we are to do, and we shall be willing to do it." In fact, they felt pleasure in the service, and frequently expressed it to me.

1948. *Chairman.*] Are you aware of the rate of pay allotted to the officers and men in that service?

No; I have only a cursory recollection of it.

1949. Did the rate of pay they got appear to you to be exorbitant?

I do not know the rate of pay; my attention was to their effectiveness; and, as often as I could, when the vessels were going into action, I went on board of them to inspect their preparation for battle, and always found their arrangements good, and the vessels in every respect fit for service.

1950. Had you the Indian allowances when you were in China?

Yes, I had.

1951. Were they allowed by the Indian Government?

They were.

1952. That is not usually the case in time of peace, is it?

Always; the custom in India was that, when you came within a certain district under the Indian command, you got batta, a certain sum that was given: the Commander-in-Chief got so much; a Captain got so much; a Commander got so much; and a Lieutenant got so much; and I believe it is continued to this day.

1953. Earl of *Ellenborough.*] Do you think that at the present moment a ship employed upon the China station, or between that and Australia and New Zealand, would receive the Indian allowances?

Not in New Zealand.

1954. Would she in China?

When I was in China we got it; whether they do now, I cannot say.

1955. While you were in China, all the allowances were fixed for the Government of India on the part of the Crown?

Yes.

1956. The station is now divided into two, is it not; there is a Commodore on the Indian station, and an Admiral on the China station?

Yes; but still it is under one command.

1957. But, excepting under peculiar circumstances, the Admiral would not come to the westward of Singapore?

No; but still they are under orders. As far as New Holland is concerned, and Australia, that is a separate command. There is a Commodore at New Zealand now who is not under the Indian command.

1958. *Chairman.*] Are you at all acquainted with the navigation of the Indus?

Not very much; in fact, the navigation of the Indus is such, it changes so frequently, that you may go one day with a very good pilot, and in the course of a month afterwards you may want something else.

1959. Do you know whether the duties imposed upon the Indian Navy, with reference to the navigation of the Indus, are satisfactorily performed?

I never heard to the contrary.

1960. Earl of *Ellenborough.*] As the river changes so very rapidly, would it not be desirable to have pilots placed at very short distances?

No doubt; it should be so arranged that it may come within a man's scope, so that he may have a local knowledge of it almost every day.

1961. Every five or six miles?

Such a distance that a man can work it up and down in the course of a day; one general pilot would not do for the whole of the Indus.

Rear-Admiral Sir Thomas Herbert, K.C.B.

8th March 1853.

1962. *Chairman.*] Would the present traffic upon the Indus justify so numerous a staff of pilots?
That is a question upon which I cannot speak.

1963. Was your attention called to the manner in which the service performed the duties of the packet service between Bombay and Aden?
Nothing more than merely from general report; I cannot speak from any personal knowledge of it.

1964. Are you at all acquainted with the pilotage system at Calcutta?
I know nothing but that the pilotage requires to be particularly skilful, and they have very good pilots there.

1965. You do not know the charges made for the pilotage?
No, I know nothing of the charges.

1966. Nor the amount of expense that it is to the Government to support it?
Not the least.

1967. Earl of *Ellenborough.*] Were you ever at Calcutta in a man-of-war?
Yes, I was there many years ago.

1968. Did your ship work easily?
Yes.

1969. Rapidly?
Yes.

1970. Did not the pilot frighten you very much, or was not he very much frightened?
Yes; the pilot appeared always frightened, when the ship was working and tacking; for he was not at all prepared for the rapidity of the evolution, was astonished at it, and very anxious till the vessel got round upon the proper tack.

The Witness is directed to withdraw.

GENERAL the Right Honourable HENRY, VISCOUNT HARDINGE, G. C. B., a Member of the Committee, is examined as follows:

General Viscount Hardinge, G. C. B.

1971. *Chairman.*] WILL you be so good as to state to the Committee how long you held the office of Governor-General of India?
I landed at Calcutta in July 1844, and I left Calcutta in January 1848; I was there about three years and a half.

1972. You held that office during the Sikh invasion?
I did.

1973. Therefore you were able to judge of the efficiency of the Native troops in the field?
I had frequent opportunities.

1974. What is your general opinion as to their efficiency?
My opinion is, that they are a very efficient army; and they have one admirable peculiarity, that from year's end to year's end they are either under tents or in huts, so that you are able at any moment to move against any enemy, provided there be the necessary public or hired cattle.

1975. What is your opinion as to the proportion of European officers to the Native troops at present?
My opinion is, that a larger proportion would probably be advantageous; but I confess that, if it be carried much further, the expense will be so heavy that it will very seriously increase the military charge of India upon the finances of the country.

1976. Can you give the Committee any general idea of the increase of charge which that would involve?
It depends upon what the increase is to be. If, as some encourage the idea, the

General Viscount Hardinge, G. C. B.

8th March 1853.

the number of European officers, with a Native regiment, should be the same as with a European regiment, then the expense would be very heavy indeed. I presume the Committee have it already in evidence that the European officers of one of Her Majesty's regiments cost 20,000 *l.* a year, and that the European officers of a Native regiment cost 10,000 *l.* a year, as at present constituted: if you were to double them, they would cost about the same as a European regiment. There are 74 regiments in Bengal, which, at an increase of 10,000 *l.* each, would be 74,000 *l.* a year, besides the armies of the two other Presidencies, and the dead weight of pensions and retiring allowances, which would cost as much more: but probably it is not intended to go so far as that. If you were to endeavour to make them more effective by increasing the number of officers, and at the same time manage it with economy, the way in which I think it might be done would be by increasing the number of Captains: there are now six European Captains and 15 Subalterns in a Native regiment. If you were to increase the Subalterns, you would at once increase the weak part of the Company's service in India, which is slowness of promotion, owing to the seniority system. The proportion of European officers ought always to be as it is in the Queen's service, one Captain to two Subalterns; now the proportion is six Captains to 15 Subalterns, where it ought to be 12; therefore, an increase in the number of Captains, without increasing the number of Subalterns, would be, in my opinion, the best thing that could be done; it would hasten promotion in the Native army, and you would obtain one officer in a regiment more than you now have: that is one mode of obtaining an increase of officers. But the real fact is, that by the present system of taking away officers from the regiments for political and staff employments, the regiment is deprived of its best officers, and those that remain are frequently not of the best quality. Even if there were an increase of one Captain a regiment in addition, it would, I admit, be a very doubtful remedy in securing regimental efficiency, although an expensive one.

1977. What is your opinion with respect to establishing a Staff corps?

I believe that plan has been suggested ever since Lord Hastings' time. The papers are now in the East India House, but not acted upon, because it was supposed that it would be impossible to work it satisfactorily. Other remedies of the same nature have been brought forward, which, when they came to be discussed as to the more practical working of such a system, were found would not answer.

1978. During that time it has been very carefully considered?

It has been very carefully considered. For the sake of the European officers of the Indian army, I am extremely anxious that, whatever may be the increase of European officers, it should be made upon just grounds of the proportions that ought to exist between the higher to the lower grades. It is now not on a just ground of proportion; the number of Subalterns is too numerous for the number of Captains. If you make any increase, I should recommend that it should be made in the Captains, and not in the Subalterns. I felt that so strongly, that within the last month I have made a suggestion to the Board of Control, from what I know and have seen of the Queen's service in India, where the promotion is slower than in any of Her Majesty's Colonies, whereas it ought to be quicker, and consequently causes dissatisfaction that a larger proportion of Captains to Subalterns should be allowed. When a regiment in the Queen's service goes to India, 10 extra Subalterns are immediately added to make it up to 30 instead of 20; the consequence is, that the period at which a Subaltern can obtain his Company is increased one-third. And the remedy I have recommended to the Board of Control is, that the number of Captains in a Queen's regiment should be 12 Captains to 10 Companies, and that six Subalterns should be struck off from a Queen's regiment. By that arrangement there would be 24 Subalterns and 12 Captains, making two Subalterns to each Captain. Now that is nearer the proportion in a Company's European regiment, in which there are 12 Captains to 10 Companies and 30 Subalterns. The effect of my proposal will be, that promotion in Her Majesty's service would be increased, without impairing the efficiency of the Queen's regiments in India. Instead of saddling each regiment with 10 additional Subalterns the moment it goes to India, it would put them on a fair footing as regards promotion with the rest of the army; viz. one Captain to two Subalterns.

1979. Earl

General Viscount Hardinge, G. C. B.

8th March 1853.

1979. Earl of *Ellenborough.*] There would be a reduction in the total number of officers in each regiment?

There would be six Subalterns reduced and two Captains added, and four officers less in the regiment; and by so doing there would be eventually a saving to the public purse of 15,000*l.* or 16,000 *l.* a year.

1980. Lord *Monteagle* of Brandon.] It would be a diminution of the amount of contingent payment by the East India Company in aid of the Queen's service?

It would be a saving to the Company of about 16,000*l.*, not immediately, but ultimately. The Horse Guards would merely lose the appointment of six out of the 10 additional Subalterns now added on a Queen's Infantry regiment going to India.

1981. Earl *Powis.*] Under that arrangement, how would the Subalterns be divided; how many Ensigns and how many Lieutenants?

The Lieutenants would always predominate, as is the case now.

1982. Are there many officers in the Company's service taken away from their regiments to command irregular corps?

Yes.

1983. Besides those who are taken off for political or civil service?

Yes.

1984. Would it be possible to adopt a system similar to that of seconding the Artillery and Engineers, so that an officer when appointed to an irregular corps should retain his precedence as a Lieutenant or Captain, so as to rise in his regiment; and at the same time an additional officer should be put to serve with the regiment, in order to keep the regiment efficient?

Then that must be done by selecting that officer from another regiment, and temporarily employing him in the regiment, otherwise if you were to seconde these officers permanently upon those regiments requiring officers, there would be a disarrangement of the proportions now existing between the different ranks. It would be very difficult to seconde officers in any regiment in the way proposed, unless they were merely lent for the moment from other regiments, so as not to disturb the proportions now existing between the grades of each regiment.

1985. Earl *Graham.*] You said that many officers are taken away from their regiments for political situations, and that, consequently, it often happens that many of the officers that remain are not of the best description; is it not often the case that officers are so long upon Staff appointments, that when they come to be Field Officers of the regiment, having done no duty with the regiment for many years, they are both unknown to the men, and not very capable of performing regimental duty?

I should say that if they are taken away as Subalterns from the regiment, it may be so; but with regard to Captains and Field Officers, when a man has served twenty and even eight-and-twenty years before he is made a Captain, he will of course know the duties of his regiment very perfectly: a Captain may be a Captain at 30 years of age or 40. If he is then taken away for political employment, when he is brought back as a Field Officer, he can scarcely be very much impaired in his knowledge of the service; he may not be quite so ready on a field-day as another officer, but I should not say that his powers of command are diminished. Very frequently the information which men acquire as Staff Officers and as Political Agents, and the part they have to take in greater concerns than the mere care of a Company, tends to open their minds, and to make them upon the whole better officers for general purposes than if they had remained all the time with their regiments.

1986. Earl of *Ellenborough.*] Does not the power of a man to command a Native regiment depend very much upon his knowledge of the men, and their confidence in him?

Certainly it does; at the same time, the officers who remain with the regiments, according to the present system, are generally those who may have been considered least fit for the higher situations to which the Staff and Political Agents are appointed; the Government always selects the best men for those situations; that is one of the evils which must exist under the present system. I may mention one instance in corroboration of my opinion: one of our best Company's officers

General Viscount Hardinge, G. C. B.

8th March 1853.

officers, is Sir Walter Gilbert; he scarcely has ever done a day's duty as Captain of a regiment; he was a Staff Officer, employed during the time of Lord Hastings; he came to England, and remained in England 12 or 15 years, and then returned to India as a General Officer, and a better officer than Sir Walter Gilbert does not exist in the Company's army. I do not say that that which occurred in his case would occur in other instances, but I merely mention it as a fact. I might mention also Sir George Murray, of the Queen's service; I believe he never had any higher regimental command than that of a Company, nor had Fitzroy Somerset, two of the most distinguished officers in the army.

1987. Earl *Powis.*] Of what rank are the officers commanding the Irregular corps usually?

They are generally Subalterns, or Captains.

1988. Lord *Elphinstone.*] Would not the fact of having held the command of an Irregular corps be rather an advantage to an officer commanding a Regular regiment?

No doubt of it; it would be one means of getting rid of some of the difficulty of this question, if an officer of suitable rank could be exchanged from an Irregular corps to a Regular corps, and take the command of that Regular corps, having obtained brevet rank for his services: it is most important that a Regular corps should be more effective in the field than an Irregular corps.

1989. *Chairman.*] From the opportunities you have had of seeing the artillery in the field, what should you say of the efficiency of that force?

I think it is as excellent an artillery force as any that exists; very efficient in all its qualifications, both scientific and practical.

1990. Lord *Elphinstone.*] We have had it in evidence before the Committee, that the proportion of Horse Artillery is greater than is necessary, and that it would be an advantage to reduce the proportion of the Horse Artillery in order to give a larger proportion of officers to the battalions?

I think there would be an advantage in having more 9-pounder guns to the Horse Artillery generally than now exists: there are 13 troops of Horse Artillery in Bengal, with 6-pounders, that is 78 guns. The field batteries are all 9-pounders: I think I horsed four bullock batteries to make them more efficient; when these batteries took the field, I arranged with the Commander-in-Chief that each field battery should have 130 horses instead of 98; and they were very efficient during the whole campaign; casualties were immediately filled up. With regard to the Horse Artillery, I think the proportion of 9-pounder troops ought to be larger. Lord Ellenborough had intended, before I went to India, by a minute, to recommend the adoption of 9-pounder troops: I looked at the proposed measure with Sir George Pollock, who was an artillery officer and a member of Council, and we came to the conclusion that it would be proper to give the plan a practical trial as soon as possible, by raising a 9-pounder troop of Horse Artillery; that troop of 9-pounder Horse Artillery was commanded by Lieutenant-colonel Alexander, an excellent officer. It was tried, and did good service during the Sutlege campaign; and I have read, that after the decisive battle of Guzerat, when General Gilbert was ordered by Lord Gough to pursue the Sikh army, he took with him that 9-pounder troop of Horse Artillery, and also some 6-pounder troops of Horse Artillery; and I saw letters which described what had passed upon that occasion; that Sir Walter Gilbert was obliged, when he was pursuing the enemy with his Cavalry, and overtook them near Attock, to leave behind the 9-pounder troop of Horse Artillery, with the Infantry, and to go on with his 6-pounders, because the 9-pounders could not keep up with the Cavalry so well as the 6-pounders. I believe he came up with the enemy at Attock with his 6-pounders, and prevented the enemy burning the bridge; so that we must not lose sight of the fact, that although a 9-pounder is a much better gun than a 6-pounder in most cases, yet that a light 6-pounder troop of Horse Artillery has advantages where Cavalry is concerned, which in India renders it of use; but my own impression is, that the proportion of 6-pounders at present is too great; and I should prefer to have more 9-pounder Horse Artillery as well as the Field Batteries. I do not think that Field Batteries would be sufficiently active in such undertakings as those upon which General Gilbert was employed, because the greater proportion of the gunners, nearly the whole, are obliged to walk on foot. Another arrangement made by Lord Ellenborough, which I recollect, with regard

to

General Viscount Hardinge, G.C.B.

8th March 1853.

to the Artillery, was, that some heavy 9-pounders should be bored out to be 12-pounders, and they did remarkably well at Sobraon.

1991. Lord *Elphinstone.*] Do you approve of the Bengal system of Horse Artillery, putting a man upon each horse, or do you prefer the detachment system?

I prefer the detachment system; I never could understand why, when the off-horse is burdened with a driver 15 or 16 stone weight, the battery can be more efficient in a long day's march over a deep sandy plain; I can understand that in certain cases, which are rare, where the horse has to get up hill, or to get through a difficulty, and where the extra weight put upon him may aid him in getting the gun out of a particular difficulty; but if a horse is marching upon a sandy plain 25 miles a day, I cannot appreciate the advantage of having an additional weight laid upon him and every horse; that is not the case with the artillery of Madras and Bombay; and the artillery of Madras and Bombay is, I understand, very excellent; in fact as good an artillery as that of Bengal; but it is clear, if the system of Bengal is the best, it ought to prevail in Madras and Bombay.

1992. *Chairman.*] Does not the converse of that proposition hold good, that if the system in Europe and in Madras and Bombay is the best, it ought to be introduced in Bengal?

That is my decided opinion.

1993. Earl of *Ellenborough.*] Is the 6-pounder in the Company's service exactly similar to the 6-pounder in use in the Queen's service?

The 6-pounder in the Indian service is a light 6-pounder, and so is ours.

1994. What is the difference between the range of the Indian 6-pounder and the range of the Queen's 6-pounder?

I imagine very little.

1995. *Chairman.*] What is your opinion with regard to the heavy artillery?

With regard to the siege artillery, I consider that we have arrived in India at a mode of carrying heavy artillery in the field, which has been proved to be a most useful improvement. At the battle of Sobraon, and at the battle of Guzerat, on which occasions my noble friend Lord Gough commanded, the effect was most useful; that system is the carrying 18 and 24-pounders, drawn by elephants lengthways, one before the other; they are able to draw the heavy guns over almost any part of the country, of hill or plain. The most difficult country in India to pass with heavy artillery was the mountain passes to Kangra, at that time held by a Sikh force. The garrison would not give up the fort according to the treaty; but the appearance of six 18-pounders so astonished the garrison in a mountain fort, considered inaccessible, that they instantly surrendered.

1996. Earl of *Ellenborough.*] You do not bring the elephants into action?

No; the bullocks which carry the ammunition are changed; that takes very little time.

1997. *Chairman.*] Were you satisfied with the efficiency of the Regular Cavalry in the field?

I never happened to see a charge of Regular Cavalry, and therefore any evidence that I could give upon the subject would be rather the opinion of others than my own; but certainly, of late years, the impression in India is strong, that a Regular regiment is not so efficient, either in action or for the general operations of a campaign, as the Irregular Cavalry: merely speaking as to the efficiency in field operations, it is very apparent that an Irregular regiment, with three British officers at its head, and with very few of the *impedimenta* of the Regular Cavalry regiments, which contain a much larger proportion of European officers, there is greater facility in getting a regiment of Irregular Cavalry into movement, and that they are more manageable for field and other operations than the Regular Cavalry.

1998. Is the drill of the Regular Cavalry the same as the European?

Their drill is the same, and their arms are to a great extent the same.

1999. That is not the case with the Irregular Cavalry, is it?

Their drill is much the same as what we should give to the yeomanry here; it is a simpler drill, embracing all the material points of the cavalry exercise in our service.

2000. Earl

General Viscount Hardinge, G.C.B.

8th March 1853.

2000. Earl of *Ellenborough.*] You saw the Governor-general's body guard give a charge at Moodkee?
They charged at Moodkee.

2001. Did they do it well?
Admirably.

2002. Marquess of *Salisbury.*] Are there the same number of European officers in the Regular Cavalry regiments as in the Infantry?
It is larger in proportion to the men; but it is smaller, in the aggregate, than the Infantry.

2003. The question refers to the Native troops?
The number of European officers to a corps of 600 swords is larger; there are more officers to it in proportion to the men; there would be in a Native Infantry regiment, where the number of bayonets would be in rank and file, 1,000; but there are not more European officers in a Cavalry regiment than in a Native regiment.

2004. Do you think that an increase of officers in the Native Cavalry is as essential as an increase of officers in the Infantry?
I should say not; where the officers are well selected, and are useful and energetic, the Commandant, the second in command, and the Adjutant in the Irregular Cavalry, do remarkably well.

2005. Earl of *Ellenborough.*] Was not that the original establishment of all the regiments in India, the Infantry as well as the Cavalry, in the early periods of our history?
I have always heard that it was.

2006. When they performed actions equal to what they have performed of late years?
Exactly.

2007. *Chairman.*] Is the Regular or the Irregular Cavalry the largest force?
The Irregular. We have now 18 regiments of Irregular Cavalry in Bengal alone.

2008. Are they called upon to perform any civil or police duties?
Yes, they are.

2009. Is that the case with the Regular Cavalry?
Not with the Regular Cavalry. The Irregular Cavalry take the police duties occasionally when required to do so. I recollect that after the war was over in 1846, I found that the 5th Irregular Cavalry was employed as a civil corps, that is, handed over to the Civil Magistrate or Political Agent. That regiment having been so employed for several years, its discipline had deteriorated, and I added eight regiments of Irregular Cavalry to the army, making that force 18 regiments. I gave over the 5th regiment to the Commander-in-Chief, and placed it under his orders, on the understanding that, as the civil power would require the aid of a police force in the shape of Cavalry, two regiments out of the 18 might be constantly employed as Irregular Cavalry in civil duties; but for no longer a period than three years at a time. In consequence of that arrangement, the 5th was reformed by Lord Gough, and will not be employed on civil duties until all the Irregular Cavalry have had, in their turn, three years of police duty.

2010. Lord *Stanley* of Alderley.] Can you state to the Committee the comparative expense of a Regular and an Irregular regiment of Cavalry of the same number?
A regiment of Irregular Cavalry has generally 800 swords; a Regular Cavalry regiment scarcely exceeds 600: but I imagine that the expense of the officers of a Regular regiment alone would amount to nearly as much as the whole corps of Irregular Cavalry.

2011. The officers in a Regular corps would amount to as much as the whole expense of a corps of Irregular Cavalry?
I should think so: for instance, in a Native regiment of Infantry of 1,000 men, the charge for the Native officers and Non-commissioned officers and men, would be about 14,000 *l.* or 15,000 *l.* a year; but the expense of the European

General Viscount Hardinge, G.C.B.

8th March 1853.

officers alone in that regiment would be 10,000 *l.* a year, although, perhaps, only seven or eight officers remain with the regiment, the remainder being taken away for civil employment.

2012. Earl *Powis.*] Would it increase the efficiency of the Regular Cavalry to give them a native saddle, and a dress more approaching to the native dress?

I have heard that frequently stated, and I presume there must be some ground for the assertion; except on parade, I have not had much opportunity of observing them in action. There are officers in England now, who have seen service with the Irregular and Regular Cavalry, who could form a better opinion upon that question; but I am convinced, whatever change be made in the dress of the Native troops, they ought not to give up the red coat or red jacket; the natives have great pride in that dress, although it is very ill contrived, and made very inconvenient to the men, by the bad taste of the European officers in mistaking tightness for smartness; it is so tight that the troops can hardly move in it; if they had lighter trousers and shakos, retaining the European jacket, of which they feel very proud, I am convinced it would be an improvement: I have seen a soldier of the Body Guard in Calcutta, within the Government House, standing sentry near the Governor-general's room, rolling upon the floor, after eating his meal of rice, in the greatest agony from the tightness of his dress; on being unbuttoned, he was immediately relieved. A tight stock must be inconvenient to the Native troops; the shako too, in some instances, weighs two or three pounds, when it ought to weigh only a few ounces; and I remember I took considerable trouble with Lord Gough in lightening the cap, and in adopting an arrangement which he proposed, of having white covers over all the caps.

2013. Lord *Stanley* of Alderley.] Do they wear the stock the same as they do in Europe?

No; the Native Infantry have generally a stock studded over with beads or cowries.

2014. Do the European troops wear the stock the same as they do here?

They profess to do so on parade; but the dress of the Europeans is equally imperfect, in my opinion, for that service: the tightness of the stock in a hot climate throws the blood to the head, and is the cause of disorders in the eyes. As to the shako, I can state a fact, that when Her Majesty's 9th regiment marched through the Kyber Pass to Jelalabad, and thence to Cabul, having to skirmish and fight in a very hilly country, they marched and fought in their foraging caps through the Pass and back again from Cabul to India, having carried their European shakos upon camels, at great expense and inconvenience, the whole distance up to Cabul and back again.

2015. Are you of opinion that it would be expedient to make any alteration in the dress of the European troops serving in India?

No; you must not get rid of the red jacket or coat, and you must insist upon the dress being made as light and loose as possible; but the same observation applies to the troops in this country; they are a great deal too tight in their dress, and are too heavy laden when in marching order.

2016. *Chairman.*] Do you approve of the muskets used by the Native soldiers?

Very much the contrary; I think the old percussion musket of our army a great deal too heavy for the sepoy; we are now about to adopt a musket that will weigh nine pounds, including the bayonet, and will carry an ounce ball with great accuracy and force 600 or 800 yards.

2017. It appears that there are about 5,000 sabres of Irregular Cavalry, and 86,000 of Infantry in Bengal alone; is that the proportion which you think desirable?

I thought the proportion of Cavalry to Infantry too small; and when in India, I did not hesitate, before the campaign commenced, to make arrangements with the Bombay Government to send up Her Majesty's 14th Light Dragoons; I also, during the war, raised eight regiments of Irregular Cavalry, and, I believe, the number remains at 18 in Bengal at the present time. In a country of plains I conceived that such an increase was very necessary: we were surrounded frequently by 20,000 or 30,000 Cavalry, having not more than 4,000 Cavalry on our side when we first took the field; and, therefore, if any advantage resulted from the operations of our Infantry and Artillery, it was almost impossible to use the

General Viscount Hardinge, G.C.B.

8th March 1853.

advantage gained on account of our deficiency in Cavalry, although on all occasions nothing could exceed the distinguished manner in which Her Majesty's 3d Dragoons conducted themselves, cutting their way through the enemy upon every occasion, and dispersing them with the greatest confidence.

2018. Various statements have been made to the Committee with regard to the efficiency of the Commissariat Department; how did you find it with regard to providing the army with tents, food, and other necessaries?

It appears to me that the Commissariat, which is a Commissariat for peace, is quite sufficient for the European portion of the army, none being required for the Native army in peace: its numbers do not exceed 28 or 30 European officers for the whole of Bengal. In time of peace no supplies of food are required for the Native army; they feed themselves; consequently the Commissariat duties in Bengal are limited to what can be performed by 28 or 30 officers for the purposes of feeding the European troops, and supplying the hospitals in peace; assuming peace to be the permanent state, and war the state of exception, the department is sufficient for its peace duties at fixed stations. When war breaks out, and the Native army are taken into the field, and can no longer feed themselves, when concentrated, but must be fed by the Commissariat, and when the European troops are concentrated for field operations, then the Commissariat peace establishment is quite inadequate for such heavy duties: an arrangement is made on the part of the Government, with agents, contractors, sub-agents, under instructions from the Commissariat, to purchase all that is necessary for the army, and those supplies have to be carried in various ways, chiefly by hired cattle; but the usual arrangement is, that each regiment must have its own regimental bazaar cattle to carry three days' provisions: the public cattle must be able to carry the tents and the spare ammunition for the Infantry; and beyond those supplies, the agents or contractors furnish the rest of the cattle for carrying the food required of the Native army. Consequently, when we talk of the Commissariat Department in Bengal, we do not sufficiently consider that it is a department simply for peace; and that when it is enlarged greatly on the breaking out of war, it is so enlarged, not by British officers, but by contractors and agents hired by the Government for the express purpose of war being discharged the instant the war is over, and again reduced to 30 British officers.

2019. Marquess of *Salisbury*.] Is not the Commissariat under the Military Board at Calcutta?

It is nominally under the Military Board; and I should say that a worse arrangement could not possibly be made.

2020. Has the Military Board the examination of all the accounts?

It has the examination of them; they are audited by persons under the Military Board; of course not by the members of the Military Board; that would be impossible.

2021. Then all the expenditure of the army in the field has to be sent to Calcutta to be there audited?

All the accounts of the expenses come to Calcutta, to be there audited.

2022. Is it possible, at that distance, to exercise any check or control over the expenditure?

It is done upon the documents that are produced; even if it were half-way from the frontier to Calcutta, whenever the auditing takes place it is done by documents, therefore the distance would not materially signify; but the delay of passing through the Military Board is an arrangement that had better be done away with as soon as possible; indeed the Military Board is so overwhelmed with a great quantity of business, that it is impossible that it should perform the duties which it attempts to undertake.

2023. Are there not instances in which the accounts of the army have been postponed even for several years before they have been audited?

Necessarily so; in the retreat from Cabul, of course, the documents of the Commissariat officers were lost. In the case of the Sutlej campaign it was concluded about the time I came away, in 1848. But in all this business of the Commissariat Department, it is, in my opinion, an imprudent arrangement to put it under the Military Board. The Military Board is a military department, something similar to the Ordnance Department in its original construction; but now

they

General Viscount Hardinge, G.C.B.

8th March 1853.

they have to attend to the public buildings, canals, roads, bridges, and everything of that description in the civil branch of the immense Presidency of Bengal. Amalgamation and consolidation have been carried too far; it is perfectly impossible that it can be done well; no one can conceive what the Board is required to perform; it is not administrative, but executive duties that they have to perform; for instance, the administrative duties of a Secretary-at-War, or of a Military Secretary to the Government, or of an Auditor-general of the Army, can, by great industry and numerous clerks, be performed, but it is an Executive Board, which has, in the first instance, not only to judge of the plans and estimates for all buildings, but to give its orders for their execution, and anybody knows when new buildings have to be erected, canals excavated and so forth, of the time that is required from month to month and year to year, in which you are liable to be cheated, and the public interests evaded; in fact, all those executive duties require so much time and so much caution, that the Military Board, having other very important military duties to attend to, cannot perform them all, for instance, the heads of the Military Board are the officer commanding the Artillery, and the officer commanding the Engineers, then two field officers from the army are selected, and these five officers, including the Commissary-general, are to do all these duties, which it is quite impossible they can perform.

2024. Are you of opinion that any considerable abuses exist in the Commissariat Department?
I am not aware of them.

2025. Lord *Monteagle* of Brandon.] Is the system of accountability, in your judgment, accurate in the investigation of the accounts?
I have always understood that the accounts were very complicated, more so than our own Commissariat, having many more documents than were necessary, and that by the immense number of those papers, an appearance of suspicion is thrown upon the Commissariat officer at every step that he takes, and it becomes very difficult for him to settle his account.

2026. With respect to delay in passing Commissariat Accounts, I believe that your own experience will enable you to inform the Committee whether there was not very considerable delay in passing Sir Robert Kennedy's accounts in the Peninsula?
I believe there never was a more able or a more honest man than Sir Robert Kennedy, and his accounts during the Peninsular war for supplies and pay of the troops amounted to 57,000,000 *l.* sterling.

2027. Do you remember how many years after the close of the military operations in the Peninsula Sir Robert Kennedy was kept in suspense, and deprived of his quit receipt?
I do not know how many years it was, but it was a very cruel predicament in which a public servant of unimpeachable integrity was placed, by a complicated system of accountability.

2028. (*Chairman.*] Have the charges which have been made against the Commissariat been more applicable to the Native contractors or to the regular Commissariat?
To the Native Commissariat. I believe it has been seldom found that the European officers have been deficient in integrity.

2029. Marquess of *Salisbury.*] In the campaigns which took place while you were in India, were the troops properly supplied with necessaries according to the contracts which were entered into?
Yes, I think they were. I should say that when the army entered the field, and had to move suddenly from Umballa to the Sutlej, of course we were not so prepared as we should have been if we had expected war a month beforehand. When I arrived at Umballa, having conferred with Lord Gough, I called for the Commissary-general, and he told me that, according to the usual preparations for the army, it would take a month or six weeks before the cattle necessary for carrying the supplies about 150 miles, to Ferozpoore, could be produced. I informed him that they must be ready in six days, and I sent for Major Broadfoot, who had served in the Commissariat Department, who was an officer of very great merit and ability, and was the Governor-General's Political Agent for the frontier, and told him the difficulty we were in, and that if we had not cattle to

General Viscount Hardinge, G.C.B.

8th March 1853.

carry provisions forward, we must call upon the Native powers, who were, under treaty, bound to deposit them where we required them, at such places and on such routes as the Commander-in-Chief might appoint. Major Broadfoot, having received the routes from the Quartermaster-general, sat up the whole night, and the next morning orders were despatched to the chiefs of the Sikh protected States to furnish provisions at the halting places, for a march of six or seven days, from Umballa to the Sutlej: and under these arrangements, rapidly made, the army never suffered from want of provisions, though they may have suffered, sometimes, from want of time to cook them. This service was accomplished by the activity, the energy and practical knowledge of that most able man, Major Broadfoot. We marched, upon an average, from 20 to 25, and sometimes 28 miles a day, without a halt, to Moodkee, through a very deep sandy country.

2030. Lord *Wharncliffe.*] Assuming the army in India, which has to be provided for by the Commissariat, to be what you have described, namely, an European army to be supplied at all times, and a Native army which supplies itself in time of peace, and requires to be supplied on active service, does it occur to you that any improvements might be introduced in the Commissariat Department, in order to render it more efficient?

I should say that you need a Commissariat Department by itself. I would not append it to the Military Board, or any other Board, but throw the responsibility upon the head of that Department.

2031. Earl of *Ellenborough.*] Would you compose it of military officers?

Yes; the only objection to that would be, that it takes away a few officers from the regiments; but I think it would work better with military officers, as at present.

2032. Lord *Broughton.*] Do you think that a Board performs the duty better than an individual officer, with a sufficient staff of assistants?

I think that a Board, with a Staff of Board officers, each having distinct and separate responsible duties, works better than one individual. I have stated this opinion about a quarter of a century ago, in some evidence which I gave upon the Ordnance Department. In my opinion the Ordnance Department under the Duke of Wellington, as Master-general, was one of the best departments in its constitution, inasmuch as every officer had a separate branch of duty to perform, for which he was held strictly responsible, and if he did not attend to it, he was liable, on the days when the Ordnance Board met, to have his conduct noticed, and the deficiency discussed. I consider that a Military Board, such as the Board of Ordnance, can work remarkably well, provided each separate department has a responsible officer at its head.

2033. Is that the case with respect to the Military Board in India?

I do not think it is, because there are duties imposed upon that Board which it is perfectly impossible for human strength to get through; and in case of reference, there is no head or superior authority to examine and ascertain whether the duty has been properly performed. In the Ordnance the Master-general has a journal every day of every thing that is done in the department, and although he may not have time to read the whole of it, his Secretary should read the whole, and point out to him anything that may require his attention, so that the Master-general can overlook the conduct of every officer.

2034. Marquess of *Salisbury.*] Who presides over the Military Board at Calcutta?

Nobody.

2035. How are the questions that come before it decided?

By a majority; they put it to the vote; when any important discussion occurs, a reference is made to the Governor-general in Council.

2036. There are only four members of the Board?

Four or five, I believe, including the Commissary-general.

2037. Earl *Powis.*] Would not the department of Public Works to which you have alluded, consisting of roads, bridges and works of irrigation, afford ample employment for a Board by itself?

Certainly.

2038. Do you think that, by constituting that a separate department, the increase of those useful and necessary works would be greatly facilitated?

Certainly.

2039. *Chairman.*] Do you consider the present system of invaliding and pensions to be such as is calculated to attach the Sepoy to the service?

I consider that system to be one of the greatest importance; I am confident that that is the great link by which we hold together the loyalty and affections of the Sepoys; every Sepoy has a strong impression that the power of England is irresistible, and with that strong impression he enters our service: he is satisfied with our good faith; he is convinced he will obtain the pension which he is promised; from the time he enters the service until he receives his pension he constantly looks forward to his pension as the satisfactory close of his career; and I should therefore say that any thing that weakens that impression, by either diminishing the pension, or by making the conditions of the service harder than they ought to be, would operate very prejudicially upon our hold upon the affections of the army and of the people of India.

2040. Has any thing taken place which has tended to diminish that confidence?

There were some alterations made in the year 1833 or 1834, particularly with regard to pensions to wounded soldiers and officers, about which I felt very strongly: in the camp at Ferozpoor, after the four battles on the Sutlege, I think we had 4,000 men wounded; the wounded Sepoys were very anxious about their pensions for wounds; I looked into the question; I went into it very narrowly; I found that, unfortunately, on the occasion of revising the pension warrant in 1833, some reduction had fallen upon the Sepoys and Native officers entitled to pensions for wounds; and I therefore immediately issued the necessary orders for giving back to our wounded Sepoys the pensions which they had had previously to 1833: this gave very great satisfaction; it improved the pensions of the men, generally speaking, from one to four rupees a month, in addition to the reduced pension. In four severe battles on the Sutlege only 231 Sepoys were entitled to disability pensions; and the cost to the State was very small, for I believe in the 20 preceding years before 1846, the number of men pensioned for loss of limb in Bengal did not exceed 120; but it had a very great effect upon the poor fellows in our camp. I should say upon the subject of the pension generally, that there are rather more than 50,000 pensioners in the three Presidencies, and in Bengal about 25,000; the principal portion of them, 16,000, are located in Oude. When I passed through that country, a great number came to Lucknow, the capital, to make their salaam to the Governor-general, and they showed the greatest attachment possible. Oude is the principal recruiting-ground for the Bengal army; it is of the greatest importance that nothing should be done to affect the pensions of the Native army.

2041. Are there any other advantages which you think, consistently with a due regard to economy, could be conferred upon the Native troops?

There are two Orders; the Order for Distinguished Services in the field, and there is the Indian Order of Merit; the latter is for Native officers, and the other for Sepoys, for distinguished conduct in action. It is limited to 200 Sepoys, and it is very difficult, when a regiment of 1,000 men does its duty in a battle, to say who is the man who has most distinguished himself in that action; so that frequently the Commanding Officer of the regiment does not like to bring forward any man as the most deserving, for that reward; if he does, the claim must go before a committee, and the committee may say, "There is nothing peculiar in this; there is nothing that strikes us as going beyond ordinary duty; have not your other men done as well?" therefore, there is some difficulty in putting it upon the ground of distinguished conduct in action, by choosing one out of 1,000 men, many of whom have perhaps behaved equally as well; but the difficulty would be removed if you were to double the number, and give them 400, instead of 200, and to make it, as it is in our own service, for good conduct as a soldier as well as for distinguished conduct in action; then the man would go back with a medal and an increased pension, and the well-conducted man would be looked up to in his village.

2042. Lord *Elphinstone.*] If it were made a reward for good conduct, inde-

General Viscount Hardinge, G. C. B.

8th March 1853.

pendently of distinguished conduct in action, would not that rather take from the value of the reward?

I would combine both, if you choose; but in a regiment there is a great disinclination to say, out of 1,000 men, who is the Native that has behaved in the most distinguished manner; the most pushing Commanding Officer will bring forward the most numerous cases; very often you cannot do it.

2043. Lord *Stanley* of Alderley.] At present there is nothing equivalent to our stripes in the army for mere good conduct?

Good conduct pay is introduced.

2044. Lord *Ashburton*.] Do you think that the rules are satisfactory which regulate at present the appointment of Native officers to the Bengal army?

I am confident that the Native officers ought to be promoted by seniority, and not by selection; that the system of seniority which prevails with the European officers in the same regiments is the best rule for the Native officers; I admit that you lose in efficiency by taking the seniors, who perhaps have already served too long to be very active; but you gain in policy what you lose in efficiency; they all look forward to their pension with the greatest possible anxiety. Seniority has been in former years the rule of the Bengal army; in the Madras and Bombay armies it is not so, they prefer the rule of selection, but I am satisfied, from all that I have heard and seen of the Sepoys, that it is a much wiser principle to give the Soubahdar and Jemadar his promotion by seniority rather than by selection.

2045. Lord *Monteagle* of Brandon.] What are the corresponding ranks in our Service to the ranks to which the Natives may attain in the Company's army?

The Soubahdar is equivalent to our Captain, and the Jemadar is equivalent to our Lieutenant, the Havildar to the Serjeant, and the Naick to the Corporal.

2046. *Chairman*.] Had you occasion to recommend any advantages to the European army during your stay in India?

With the concurrence of Lord Gough, I recommended, that in the European army, Serjeants who had distinguished themselves in action should receive commissions in the army; and generally speaking, after they had been so selected, they were put into other situations, chiefly into uncovenanted situations; they have received advantage from their promotion, and have behaved remarkably well.

2047. What is the amount of accommodation in barracks for the European soldiers in India?

The accommodation in the barracks I found to be good; there is every desire on the part of the Government and the Home authorities to give the British troops the best accommodation that can be obtained; but certainly the barracks in some instances have failed, they are not so healthy as one would have reason to think they ought to be; generally, the fault has been, that the rooms were not built high enough; the atmosphere of course becomes foul and tainted by having a great body of men on the same floor, and when it ascends, it ought to have plenty of room to escape; but I must say, that that, in a great degree, has been obviated by what Lord Ellenborough commenced when he was in India, that is, by building barracks in hill stations for European troops; some barracks were built by Lord Ellenborough at the hill stations of Kussowlie and Subathoe; the last was built at Dugshai, in my time, when the rooms were constructed for 25 men each, instead of 100; in the latter case a few blackguards could disturb the comfort of the whole company.

2048. Did you find much delay in receiving answers to communications which you made to the Home Government with respect to Army matters?

I think not.

2049. Lord *Stanley* of Alderley.] Had you opportunities of seeing the East India Company's European regiments on service?

Yes, I had.

2050. What is your opinion of them, as compared with the Queen's troops?

That I should prefer the Queen's service on this account, that when a new regiment arrives with all its young fresh blood, it is perhaps more energetic, more active, when it first comes up to the frontier, than a regiment which has been there 20 or 30 or 40 years constantly in India; but nothing could exceed the good conduct of the European regiments of the Company.

General Viscount Hardinge, G.C.B.

8th March 1853.

2051. Would it be desirable to increase the number of the Company's European regiments?

If a larger European force is required, I should prefer seeing the Company's European force increased; not that the Queen's service would not be quite as good, but I think we have enough of the Queen's regiments employed in India; I think it is no longer a favourite service with the Queen's officers. I have stated to the Committee, in an early part of my evidence, what I have felt myself obliged to do for the purpose of remedying the slowness of their promotion. It is very generally the case that officers, as soon as they hear that their regiment is going to India, attempt to exchange out of it; and that is a feeling which, if it prevails in the British army, is very unsatisfactory. The service is far too long a period.

2052. Do you think it would be possible or expedient to employ the officers of the Queen's regiments in any civil or staff services in India?

I think it would. My opinion is, that the first claim for all staff and other situations of emolument is of right with the Company's officers, that men who are expatriated as they are for the whole of their professional career, have a right of preference over our British officer, who are only there for a period; but, on the other hand, when we see that the effect is so disadvantageous to the efficiency of their corps, and that they cannot supply the officers that are required, it is very fit and becoming that certain situations for which the Company's regiments cannot afford officers should be given to the Queen's officers.

2053. Do you think that some of the officers might be so employed without at all impairing the efficiency of the Queen's regiments?

I think it should be limited; it should be strictly under the control of the Commander-in-Chief in England. It is of such vital importance to have the Queen's troops always in a state of the most perfect efficiency, that no Commander-in-Chief and no Governor-general should be allowed to exercise his discretion, so as to alter the rules laid down for maintaining the efficiency of the Queen's corps abroad.

2054. Earl of *Ellenborough.*] Was not an additional number of Lieutenants given to the Queen's regiments in India, upon the alleged ground of its being necessary to maintain the efficiency of the officers?

Yes; but that reason is very much diminished in force, owing to the quickness of communication. The number proposed by me will be four less, and the promotion accelerated.

2055. Would there not be this difficulty in placing the Queen's officers in situations in India, in which they would be brought into contact with the natives, that they are not generally acquainted with the native languages?

It would be necessary that they should qualify themselves, as they now do, for the situation of Regimental Interpreter; but, in the first instance, I would employ them very much upon surveys, and duties of that description.

2056. Lord *Elphinstone.*] With regard to the unpopularity of the service in India among the Queen's officers, would not that be diminished if the regiments were more frequently relieved, so that they did not remain so long in India?

Certainly, it would be a great boon to the army.

2057. At present it is a kind of banishment for a man going there for 15 or 20 years?

It is nearly his professional life; they ought to be relieved every 10 or 12 years.

2058. Do you think that would conduce to their greater efficiency, as well as to the comfort of the officers?

Yes.

2059. Marquess of *Salisbury.*] Is there any objection to it, except on the score of expense?

Nothing but the expense.

2060. *Chairman.*] Would not any system that would induce the officers of Her Majesty's service, who go to India to learn the native languages, be useful in increasing their efficiency?

General Viscount Hardinge, G. C. B.

8th March 1853.

Of course it would; they would be, generally speaking, more efficient, because they have a large number of native people about them.

2061. Earl of *Ellenborough.*] It must frequently happen that a man who has served in India in a Queen's regiment as a Captain or a Lieutenant, at a later period of his life goes to India as a Major-general or as Commander-in-Chief; would it not be a great advantage to a man in that situation to be able to speak the native language when he has to direct native troops?

It would be important if a man who came forward to speak as Governor-general or Commander-in-Chief should be able to do so with great precision of expression in a language which is foreign to him; but unless he can do that, I think it would not have a good effect, that he should address the Native troops in their own language. A man of great state and great power must say what he has to say in public as well as any man in the country can do, or else they would be inclined to think that he was not so able as he ought to be for his station.

2062. Earl *Powis.*] What number of officers to a company have the Company's European regiments?

They have one Captain and two and a half Subalterns*; two extra Captains and 10 extra Subalterns for each battalion; that is, 12 Captains and 30 Subalterns.

2063. Have remonstrances been made at any time by the Company as to the great number of officers attached to the Queen's regiments on the score of expense?

Not that I have heard of.

2064. Lord *Stanley* of Alderley.] Are there as many officers detached from the Company's European regiments upon staff employment as there are from the Native regiments?

There are a considerable number; they are entitled to the same privilege of being detached in the same proportion as in the case of a Native regiment.

2065. Officers are detached from the European regiments on staff employment?

Yes; and therefore, in order to keep them efficient, the number of Captains has been increased to 12, and the Subalterns to 30.

2066. Is the number of officers greater than in the Queen's regiments?

Certainly, in proportion to the number of men. But I hope, if my proposition should be adopted, as I understand it will be, that we shall be nearer upon a par, by having 12 Captains in proportion to 24 Subalterns, the same proportion as that which pervades the whole of our Regular service in Great Britain and the colonies.

2067. *Chairman.*] Do you consider that it would make the Indian service more popular with the Queen's regiments if the officers knew that if they qualified themselves, they might be employed in staff situations?

As soon as the information spread, as it soon will do, they will probably qualify themselves, if the situations are made worth their pains.

2068. Lord *Ashburton.*] Would you limit the offices to which officers in the Queen's service could be appointed?

That will depend upon the Court of Directors; I imagine that they would not appoint the Queen's officers to political and civil employments.

2069. To what situations should you think it advisable to appoint them?

There are staff situations to which they are now not eligible, and that is felt severely by the Queen's officers. I do not speak of the situations of Adjutant-general and Quartermaster-general, which are well paid, but with regard to staff situations generally; they have not the proportion of staff situations which they think they ought to have relatively to their number of men, and, as I have before said, the preference is justly given to the Company's officers.

2070. Earl of *Ellenborough.*] Would it not be a measure to the last degree unpopular with the officers of the Native army if the privilege of holding political appointments, and other appointments, called civil appointments, were extended to the Queen's service?

Yes, I think that is a description of duty which cannot be extended to the Queen's service, but executive duties may; such as surveying.

General
Viscount Hardinge,
G. C. B.

8th March 1853.

2071. Earl *Powis*.] What becomes of the supernumerary officers in a Queen's regiment on its return to England?

The 10 extra Subalterns are placed on half-pay: there is an objection to seconding them; but they go upon half-pay till opportunities occur, and then they are brought back to full pay.

2072. Does that often lead to cases of individual hardship?

It does; and therefore, by the plan which I have proposed, although the two junior Captains would be put upon half-pay when they arrived in England, they will have had their promotion considerably earlier, and only six Subalterns will go on half-pay, instead of 10.

2073. Earl of *Ellenborough*.] Is it not the custom to take the more useful men from the Company's European regiments for the purpose of placing them in the Native regiments in a different capacity?

That is often done: the Drill Serjeants of the Native regiments are Europeans, and in the Ordnance Department the offices of Storekeeper, and offices of that description, are given to European Non-commissioned officers of the corps.

2074. And the taking away the best men in that manner causes rapid promotion?

Yes; I should say that a soldier in the East India Company's service, who is honest and sober, and can stand the climate of India, would have a very good career open to him, as far as profit is concerned; but our men in the Queen's service have not so good a chance.

2075. Lord *Stanley* of Alderley.] Is it your opinion that the proportion of European troops to Native is sufficient, or that it ought to be increased?

It is very difficult to say what the proportion should be at present in Upper Bengal, which really is the fighting part of the country. The army of Bombay has no doubt seen a great deal of hard service; but of late years the greater portion of the work has fallen upon the Bengal army; but it is a very difficult question. If the proportion is to be taken with reference to the troops of those countries, generally speaking, such as the Burmese, I should say it was ample, more perhaps than is sufficient. If it is to be taken in reference to the other possible enemies we may meet with, such as the more warlike Sikhs, even under those circumstances I am of opinion the present force would be sufficient; but the necessity of British troops would be greater in this case than in the other. In any case, it would be unsafe not to have a large proportion of European soldiers, on all occasions, when war is to be made on a great scale: for we may praise the Native army as much as we please, and every General Officer who gives his evidence must, very naturally, have a feeling of gratitude and admiration towards the Native troops, for their loyalty, bravery and attachment, and can truly speak highly in commendation of their excellent good qualities; and yet he would say, if he is obliged to make a comparison between them and the European troops of the Queen's or Company's Native services, that the superiority rests, as heretofore, with the European troops, and I trust it ever will be so.

2076. Even in time of peace, would it be prudent to diminish the number of European troops in India?

We cannot say what is a time of peace in India, war comes on so rapidly; for instance, at the present moment there are very large Native forces in the interior of India, made up of States which are partially tributary and subsidiary to us; there are also the frontier Native powers; the force of the whole, though disjointed and dispersed, is very large indeed, so that you must always be prepared; nobody can tell one day what the next morning may bring.

2077. You mean that it is your opinion, that even when there are no active operations going on with any formidable enemy, it would not be prudent to reduce the number of European troops now serving in India?

I cannot say "now serving in India," because if the Punjaub, inhabited by the most warlike and, physically, the most powerful race in India, should become quiet, it may be possible to reduce a portion of the European force in India; but it would be difficult at present to say what should be the positive proportion; the extent of new territory is great, and much must depend upon the nature of the adversary we are likely to have against you: at the present moment there is

General Viscount Hardinge, G.C.B.

8th March 1853.

Gholab Singh on our frontier, and there is a large extent of mountain, and a range of hills between Cashmere and the frontier of Nepaul, occupied by hill tribes, principally Rajpoots; they chiefly belong to us, and there is nothing to be apprehended from them, nor is there anything to be apprehended from Cashmere. I have a statement from Colonel Steinbach, whom I allowed to go to Cashmere in 1846; he has remained there for the last five years, and I desired him the other day to send me a return of the force that Gholab Singh has in Cashmere and at Jummoo; the population of Cashmere is about 750,000; in his letter, now in my hand, he says, of Artillery, Gholab Singh has about 30 brass guns of different calibre, varying from four to nine-pounders, including one troop of Horse Artillery, nine-pounders, generally stationed at Jummoo; then he says they may have from 150 to, perhaps, 200 small mountain guns, carried on the backs of mules or by men, each gun throwing a ball of about a pound weight, with two men attached to each gun. These, he says, cannot be called Field Artillery. The Regular Artillery, if they can be so termed, amount to 600 men; the Regular Cavalry to 550, and the Regular Infantry amount to 10,000; the Irregular Cavalry, very badly mounted, and without discipline, are 700; the Matchlock and Gingall men, distributed in different posts in hill-forts dispersed over the Maharajah's dominions, may amount to about 8,000, making altogether 20,000 men, of which there are only 10,000 regular troops. This corresponds with what was the force of Gholab Singh in 1846, when the Sheik Immamodeen, then in possession of Cashmere, refused to give it up to Gholab Singh; we moved up, I think, 6,000 men from Lahore and the Jullundar, to the foot of the hills near Jummoo and Bhimber, and immediately the Sheik gave in; at that time the utmost force which Gholab Singh could bring to bear was about 20 pieces of artillery, and about 12,000 men. There is not much to be feared from that quarter. Then the next enemy on our frontier would be the Nepaulese; they have a system of employing a portion of their troops, say 8,000 or 10,000, brought out every year; they pay them for the year they are out, and having drilled and disciplined them, they go back, and another portion are brought out the following year, much upon the same system as that of the German Landwehr. They would be enabled to turn out probably 50,000 fighting men in the hills; but if those troops came into the plains for offensive operations, they would produce very little effect; they have no horses, and not more than 30 pieces of artillery, exclusive of gingals and small mountain pieces, and, therefore, they could not keep the plain with Infantry alone. The Burmese, for offensive operations, are still less powerful. Then with regard to the interior of India, in the year 1847 I called for a Return, from the various native States throughout India, of the number of troops each kept up under arms of Artillery, Cavalry and Infantry; and according to a Return, which was obtained with some difficulty, it appeared that for the whole of India, including the frontier States, Cashmere and Nepaul, it amounted to about 390,000 men. The most numerous are the Nizam's forces, about 60,000; Oude, about 50,000: then take the whole of Rajpootana, composed of several States; they appeared by the returns to have about 60,000 Rajpoots; the Gwalior force at Nursingpoore was about 32,000 men; that is now replaced by a force of about 9,000 or 10,000 contingents, under British officers. And I may here say, in passing, that it was fortunate, before the Sikh campaign broke out, that this Mahratta power, which had between 30,000 and 40,000 troops and 150 guns, had been conquered. It could have assailed us on our flank and rear, when engaged on the Sutlege; but that force had, by Lord Ellenborough's operations at Maha-raja-poor, been replaced by a British contingent of 10,000 men. In Bundelkund I think the number of troops maintained in arms by the different Native States would be about 35,000; then you would have Orissa and Nagpore, and a great number of small Native States, chiefly in Bengal, dispersed in every direction, which would make the total Native force amount to about 380,000 or 390,000 men kept up as soldiers.

2078. Earl of *Ellenborough*.] And all the disbanded men throughout the whole country could be brought in in a week?

Perhaps so; I have given you the whole number. As to the extent of the danger which we may have to apprehend, I must observe, that 100,000 men belong to the two Mussulman Powers of the Nizam and Oude, and that between these and the Hindoo Native States there would be so great a difference, arising out of religious and political motives of action, that I do not think any formidable combination would be possible, except perhaps on the part of the Rajpoots, who

General Viscount Hardinge, G.C.B.

8th March 1853.

might on any serious misunderstanding be the most formidable enemy within our territory.

2079. Lord *Elphinstone.*] Did you include in the numbers you mentioned in the Nizam's country the Nizam's contingent?

The contingent is about 12,000 men, under British officers; but in the Nizam's territory there are great numbers of very warlike tribes of mercenaries, such as Sikhs, Arabs, Rhohillas, Turks, who are maintained by his Highness, a large unruly mass of fighting men, who mutiny for their pay, and, when required, do their duty remarkably well. Then the force with which we can control these dispersed powers amounts to about 320,000 good troops, European and Native, moved at the will of one man, the Governor-general, ready to act as a united army against this heterogeneous mass of 380,000 men, consisting of all the various tribes of India, with conflicting interests, and no confidence in each other.

2080. *Chairman.*] Do you think it would be desirable to give military organization to the police?

That very much must depend upon the nature and circumstances of the country in which you propose to employ them. If they are to be employed in Scinde or the Punjaub, or in newly annexed or conquered provinces, I think a military police is the best arrangement that can be made for controlling and keeping down any turbulent spirit in the country, and at the same time treating the natives with just consideration. After the Sikh war on the Sutlege, I raised four Irregular corps for that purpose, composed of Sikhs, as Irregular corps, for the very purpose of a Military Police; and I understand that since that time a very large force of Irregulars have been raised, 10,000 or 12,000 men, and placed under the Board of Administration in the Punjaub, besides the Irregular Military Corps in the Punjaub; and therefore I should say, that a Military Police in a newly conquered country is both necessary and useful. If, on the other hand, the question refers to placing a Military Police in the old Regulation Provinces from Agra down towards Calcutta, then I should doubt whether it were necessary and politic, unless you come to the resolution that the Government of India is to be carried on under a military form and organization, instead of by a civil one; if it is to be by civil rule and civil machinery of government, I should say that, in the old established Regulation Provinces, you do not require that description of force: that is very much the opinion of the magistrates and civil officers. Mr. Thomason, the Lieutenant-governor of Agra, objected to the four battalions of military police established by Lord Ellenborough; he thought that description of force unnecessary, and he gave his reasons for it. The four police corps raised by Lord Ellenborough in 1844, did very good service during the Sikh war; but then they were in parts of the Upper Province, where we always had a large military force, and it was found inconvenient that men who were to do the active and detached duties of police should be in red coats, with heavy muskets and accoutrements, in the ordinary transaction of their civil duties. We were at that time reducing the army; and as those four regiments of Military Police were an experiment, they were reduced by me, with this proviso, that the Lieutenant-governor, Mr. Thomason, was to retain as large a proportion of the men, who had been taught the use of arms, as he pleased; and they were thus placed upon nearly the same footing as the Irish police; that is to say, they were to be kept instructed in the use of arms, so that if they were employed as guards upon the gaols, or the treasury, they had arms ready to be put into their hands which they were readily taught to use if necessary; whilst, under ordinary circumstances of duty, they would, as the Irish police do, be able to go about without fire-arms, and in their light native dress, without their muskets and accoutrements, and carry on their civil duties, armed or unarmed, as the circumstances of the case required. But I ought to observe, that Military Police corps existed in Lord William Bentinck's time, in 1830; that he caused about 16 battalions of Military Police, or Local corps of the same description, to be put down; he thought them expensive and inconvenient; in his opinion they were not required, and he reduced them, making a saving of 5,000 *l.* a year on each battalion, which was approved by the Home Government. It is stated that the change he introduced had succeeded. If there is to be a continued system of Civil government as contradistinguished from a Military government in the old established provinces of the country, it appears natural that the police should be civil, and under the magistrates, and as much as possible on the system of the Irish police. But I must again

General
Viscount Hardinge,
G. C. B.

8th March 1853.

again say, that in the parts of the country where territory has been recently annexed, a Military Police is a superior instrument to any Civil Police of Burkundauzes, and that distinction has long prevailed. We have now, and have had for many years, about 18,000 armed men in various Irregular corps employed as Military Police corps: the four Sikh corps are on the same military organization as Lord Ellenborough's Military Police corps. These Military Police corps are raised, each man receiving five rupees a month, with two or three British officers attached to each; being paid at a smaller rate of pay than the Native Regular troops, and more dispersed, they are not so easily kept in order; they have, as armed men, the greater power to be oppressive, if dispersed, and sometimes they may have the inclination, owing to the smallness of their pay; upon the whole, they have answered well, and when I was in India I employed the Irregular Cavalry and the Irregular Infantry regiments in police duties in newly ceded districts. If it be intended to carry on the Government under Magistrates and civil officers, then the Civil Police, on the Irish plan, appears to me to be the best; but that whenever you are in any difficulty, in a newly conquered or ceded country, and amongst a military population, a Military Police works more energetically.

2081. Earl of *Ellenborough.*] Do not you think that a Military Police might be useful for the suppression of dacoitee in the Lower Provinces?

I do not see how the dacoitees could be kept under by a Military Police heavily armed.

2082. Was not Saugor kept quiet by a Military Police?

I believe when you put them there, they were very useful, the country being disturbed; but the Lieutenant-governor made to Lord Ellenborough a strong appeal against the system, to their being employed at Agra, Delhi and Kurnal. But, according to the arrangement made at the time of their reduction in 1846, a certain portion were to be taught their drill at the end of each year, as the Irish police are; and, whenever they were wanted, they might take their arms, and mount guard on the gaols or treasuries, or on any emergency, in ordinary times, not taking their arms.

2083. When you moved the troops forward upon the second crossing of the Sutlege, what did you do with the four battalions you have mentioned?

They were employed in convoys, and in doing a great deal of service in the towns in the rear.

2084. How many troops did they save you?

I should say they were not so useful as four battalions would have been, because in our difficulty, if we had had four battalions, we should have ordered them up; but having them, they assisted in maintaining order in the rear, which probably would have been more or less in disorder if we had not had them.

2085. Earl *Powis.* How many Rifle corps are there in the regular Native regiments?

Some of the regiments have a company of Riflemen.

2086. (*Chairman.*] Are there any other points connected with the possible improvement of the efficiency of the army in India upon which you could give information to the Committee?

It is a very wide and a very large question; some questions have been put with regard to caste; I should say, speaking from what I have heard, rather than from what I have seen, that the Bombay army is a more easily managed army than that of Bengal, from its having no difficulties as to caste. On some occasions, amongst the high caste men in Bengal, it is said, there was a disinclination to work in the trenches; by management and conciliation, they were induced to do so, but there is a good deal of difficulty sometimes with the high-caste men; on the other hand, I must say that nothing could exceed the loyalty and attachment of the Bengal army, under Lord Gough, during the whole of the Sutlege campaign; I do not believe we lost 30 men by desertion during the whole time; and when you consider that they were several months collected in a large body, from 5,000 to 10,000 men at Ferozopore, constantly in contact with a mutinous Sikh army of 50,000 men, within 50 miles of our cantonment, Sikh emissaries constantly trying to tamper with our Sepoys, holding out to them the great advantages of double pay and high rank, that is, promotion to the rank of Major, Lieutenant-colonel, and General Officer. I felt it to be a very dangerous state of things indeed, and was

glad

General Viscount Hardinge, G. C. B.

8th March 1853.

glad when, by the Sikh invasion, it came to a crisis, for fear that so successful an example might shake the fidelity of our troops; but it did not; they stood the trial, one of the most severe that any troops ever were exposed to, by having such temptations put before them; and when they fought, nothing could exceed their good conduct at Sobraon.

2087. What is your opinion of the results of the present system of furlough?

With regard to furlough, I suppose it will end in the officers being allowed to come home, instead of going to the Cape; I should say that would be an advantageous arrangement; but, upon this question of furlough, there is in India so much said by the press, and it is very naturally made such a question of professional feeling, that I should rather leave the judgment to be formed upon the merits of the question, to the cool discrimination of the Board of Control and the Court of Directors.

2088. Lord *Stanley* of Alderley.] Had you ever to complain of the efficiency of the medical officers in attendance upon the regiments?

No, I had not; there are a sufficient number of them. If we have timely notice of a campaign, we can always bring up the assistance of a sufficient number of medical men.

2089. Lord *Broughton.*] Do not you think that it is, upon the whole, advisable that the same regulations, and the same system generally, should prevail in the armies of the three Presidencies?

I think assimilation is very good; but if assimilation is carried too far, it may create great mischief, and I am not at present prepared to say that assimilation has not been carried already far enough.

Ordered, That this Committee be adjourned to Thursday next,
Two o'clock.

Die Jovis, 10° *Martii* 1853.

LORDS PRESENT:

The LORD PRESIDENT.	Lord COLCHESTER.
Marquess of TWEEDDALE.	Lord WHARNCLIFFE.
Earl GRAHAM.	Lord WYNFORD.
Earl POWIS.	Lord ASHBURTON.
Earl of ELLENBOROUGH.	Lord GLENELG.
Viscount CANNING.	Lord STANLEY of Alderley.
Viscount GOUGH.	Lord MONTEAGLE of Brandon.
Lord ELPHINSTONE.	Lord BROUGHTON.
Lord COLVILLE of Culross.	

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

David Hill, Esq.

10th March 1853.

DAVID HILL, Esquire, is called in, and examined as follows:

2090. *Chairman.*] WILL you be so good as to state to the Committee what is the system of judicature which generally obtains in India?

The system generally consists of two distinct parts: one for the Presidency Towns, and the other for the Provinces. The former is founded chiefly on Acts of Parliament, Letters Patent from the Crown, and appointments by Her Majesty of the Judges of the Courts. The other rests almost exclusively upon the Legislative Acts of the Local Government, and upon the exercise of their authority.

2091. With regard to the Presidency Towns, what are the Courts constituted under that system?

The principal Court at each of the Presidency Towns is the Supreme Court of Judicature, which, by its constitution, consists of a Chief Justice and two Puisne Judges. For the last 15 or 16 years, however, the Courts at each of the subordinate Presidencies have only had a Chief Justice and one Puisne Judge. The second appointment has not been filled up.

2092. Earl of *Ellenborough.*] Before the year 1828 or 1829, there were three Judges?

There were three Judges later than that time, and since the last Act for the government of India; and the law still remains as it was, that the constitution of the Courts at Madras and Bombay shall consist of three Judges; but, practically, that has not been done: there have been only two at Madras and Bombay for the last 15 years.

2093. *Chairman.*] Will you state the distinction between the Queen's Courts and the Company's Courts?

The Queen's Court exercises jurisdiction, locally, over the Presidency Town, the limits of which have been defined on the establishment of the Supreme Court, and it exercises personal jurisdiction over British-born subjects (Englishmen) within the limits of the territory of each Presidency. It has thus two jurisdictions: one local, over all the inhabitants, Native and European; the other personal, extending to all British-born subjects within the limits of the Presidency and territories subject to the Government.

2094. What do you understand by "British-born subjects"?

Born in England, or their children in wedlock.

David Hill, Esq.

30th March 1853.

2095. Would half-caste persons, born in wedlock in India, be considered British-born subjects?

No If they lived within the local limits of the Supreme Court, they would be subject to its jurisdiction like the Natives; but if they lived beyond the local limits, they would be subject to the jurisdiction of the Company's Courts, not to the jurisdiction of the Queen's Courts.

2096. Lord *Monteagle* of Brandon.] If they were the descendants of a British father and a Native woman, and born in wedlock, would they be dealt with as Natives?

I only remember one such case; I do not know what the law would be; I suppose if an Englishman married a Hindoo, the children would be regarded as English.

2097 *Chairman*] What are the other Courts in the Presidency Towns?

The Supreme Court exercises civil and criminal jurisdiction in the way that has been described Then within the last three years, in the year 1850, a Small Cause Court was established, founded upon the model of the English County Court. That has jurisdiction in all cases within the limits of 500 rupees (50 *l.*). The Judges are appointed by the Government. At present there is an English lawyer at the head of the Court in Calcutta, and another gentleman, who had been many years in the Court of Requests, which existed for the trial of small debts before, and a native as the third Judge. That Court transacts a very large amount of business. The mode of proceeding is summary, they do not record the evidence; there are no pleadings; there is merely a plaint and answer; and the parties are called before the Court.

2098. Was the first Judge in that Court an English barrister, practising in India, or was he an English lawyer, who went out to India for that appointment?

I have not any personal knowledge of that circumstance. I suppose he went out to practise in Calcutta, and found this a better provision for him.

2099 Lord *Elphinstone*] Has a similar Court been established at Bombay and Madras?

Yes The Act extends to all the three Presidencies, and a Court has been established accordingly at each of them.

2100 *Chairman*] Are those Courts working well?

The Calcutta Court, the only one from which I have a return, is working uncommonly well. I have with me a short memorandum, which shows, up to the end of the first six months of the operation of the Court, the amount and nature of the business which had been transacted in this Small Cause Court. In six months they had decided 9,068 cases of those, 5,188 were not above 10 rupees (1 *l.*), The jurisdiction extends to 500 rupees, but the number of cases between 400 and 500 rupees is only 27

2101 Lord *Broughton*] What Presidency are you speaking of?

This return is from Calcutta we have no similar return from the other Presidencies yet.

2102. Have you any return from Bombay?

The Court of Bombay was much more recently established. The Judges of the Supreme Court there were averse to the introduction of this new Court; they conceived that a continuance of their own Small Cause Court was a preferable arrangement, and there was a good deal of delay in introducing the new system.

2103 Lord *Monteagle* of Brandon] Was there not a Bill introduced for that purpose by the Government of India, which was not carried?

It was not carried. Then, at the Presidency, there is also a bench of Magistrates, Justices of the Peace, who exercise jurisdiction in cases of assault, petty criminal cases, and they have authority, by a late Act, to exercise jurisdiction in cases of petty larceny to the amount of 2 *l.* (20 rupees). Those are the only tribunals that exist at the Presidency: a bench of Magistrates for trying petty criminal cases, a Small Cause Court for trying civil cases up to 50 *l.*, founded upon the English County Court Bill, and the Supreme Court, which has jurisdiction in all cases, civil and criminal, within its local limits, and personally over all British-born subjects within the limits of the territory.

2104. *Chairman.*]

David Hill, Esq.

10th March 1853.

2104. *Chairman.*] Will you state how the law is administered in each of those Courts?

The law that is administered is the law of England, except as it is provided in the constitution of the Court, that in matters of caste, of marriage, of succession, of inheritance, and in all questions affecting religion, the law to be administered by the Courts with respect to Hindoos and Mahomedans shall be respectively the law of their religion. Therefore, the Court administers the law of England generally to suitors, and in the trial of prisoners; but in those excepted cases, it administers the Hindoo and Mahomedan law.

2105. Does it administer any other law with regard to foreigners?

They have made a sort of Hindoo and Mahomedan law of their own. It is not the Hindoo and Mahomedan law as they have formerly existed in any part of India, but as it has been modified by the Court in the course of two or three generations: they have made a law that works better, as they think, for the purposes of justice, than the law they found. In that respect, it may be considered a peculiar law.

2106. Lord *Broughton.*] Not written?

Written only in the cases which have been decided by the Court. The practitioners in the Supreme Court have become Hindoo and Mahomedan lawyers, after the fashion of the law which is administered in those Courts.

2107. *Chairman.*] Are those alterations in the Native law such as to bring it very much into conformity with the English law?

I have not any personal knowledge upon that subject, but I imagine it is so in most questions that arise: in questions of contract, the law is the same. It is only in those peculiar excepted cases affecting religion that it differs.

2108. In the Supreme Court and the Small Cause Court the Judges are paid?

The Judges of the Supreme Courts are sent from England; they are appointed under the Queen's Commission.

2109. Are the Magistrates, the Justices, paid?

Yes, they are salaried Magistrates.

2110. Lord *Monteagle* of Brandon.] What law would be administered in the Mofussil in the case of an Englishman or an American Christian?

It would be the law of the defendant in a civil case. In criminal cases, an Englishman is not subject to those Courts.

2111. Then, there is no law applicable to an Englishman in the interior of the country?

The Judge there has to find out the law that is applicable to the case, as a Judge here does with respect to a Spanish or a French case.

2112. Therefore, in that respect, an Englishman or an American Christian in the interior is worse off than either a Hindoo or a Mahomedan, who has the strict law to appeal to, not the law which has to be fished for with the chance of the Judge not ascertaining it correctly?

But the party himself, or his counsel, would give evidence of the law as they do in an English Court. When an English Court has occasion to administer any foreign law, evidence is taken as to the provisions of that law, and it would be so in the Indian Courts with regard to those particular cases.

2113. Has not great inconvenience been felt, from the want of a defined law, in the interior for persons who are neither Mahomedans nor Hindoos?

I think we have a great deal too much of judicial nicety; we try to make too much of law. We do not confine ourselves, in India, enough to the simplicity of the case.

2114. *Chairman.*] Will you state what are the Courts in the Provinces?

The general description of the Courts in the Provinces is, that all India is divided into districts, usually called zillahs: a zillah contains commonly about 800,000 or 1,000,000 of inhabitants; over this district is placed an officer, exercising civil and criminal jurisdiction as Judge; generally the jurisdiction of the other officers of the Government, the Revenue Officers, is coterminous with that of the Judge. Three-fourths of the revenue of India consists of the rent of land, and, therefore, the

David Hill, Esq.

10th March 1853.

the principal duty of the officers of the Government is to regulate affairs connected with the landed interests of the country: the Collector's local jurisdiction is generally of the same extent as the Judge's, and in all parts of India now, except the Lower Provinces of Bengal, where the permanent settlement of the land revenue is in force, the Collector is also Magistrate of the district, superintending the police officers, apprehending offenders, and exercising limited criminal jurisdiction in petty offences. Then this Zillah Judge, the Judge of this district, containing 1,000,000 of inhabitants, more or less, has under him a variety of Native Judges, exercising a more limited jurisdiction. The higher Native Judges have their cases transferred from the Judge's file for trial, as the Vice-Chancellors here have from the Lord Chancellor's file; he makes a distribution of the business amongst them. The lower officers for the trial of petty cases have files of their own, and they are distributed in different parts of the zillah. There are as many as six or eight or ten districts in each of them, having what is called a Moonsiff, a Small Cause Judge. In Madras, the average amount of the jurisdiction exercised by those Moonsiffs, the lowest class of Native Judges, is not much above 3 *l.*, commonly between 3 *l.* and 4 *l.*; I think, in Bengal, it is a little more, 5 *l.* or 6 *l.* Those different officers have different designations: the Moonsiff is the lowest; then the Amin; then the Sudder Amin; then the Principal Sudder Amin; different grades of native officers, with different scales of jurisdiction. An appeal lies, according to the amount, from the lower authority, the Native Court, to the Judge of the district, the Zillah Judge; the Zillah Judge himself has an original jurisdiction, unlimited in amount, and an appeal lies from his decision. The Sudder, or Chief Court at the Presidency, as a Board of Superintendence, has control over the local Judges, and interferes when it finds it necessary to stimulate them to exertion, or to correct their errors, and also to report to the Government, and to lead to their admonition or removal; they also are the highest Court of Appeal, to whom must come all appeals above 10,000 rupees, or 1,000 *l.*, the amount ultimately appealable to the Queen in Council; no other Court can receive an appeal if the amount is so high; they also may receive a second or special appeal in any case in which they are satisfied that the decision passed by the Court below, whatever that Court may have been, is contrary to law, or to the rules of practice. From the Sudder Court an appeal lies to the Queen in Council, if the amount be above 1,000 *l.*

2115. Earl of *Ellenborough*.] Is there any appeal from any Native Court to any other Native Court?

Appeals are made to the Zillah Court, and the Zillah Judge is authorized to refer those appeals to the higher Native Judge, the Principal Sudder Amin. A great portion of the duty of the Principal Sudder Amin is trying appeal cases referred to him.

2116. How many appeals can there, by possibility, be in any one case, supposing there is an appeal from the Moonsiff's Court?

There can only be regularly two appeals; the first appeal is a matter of right; the losing party is entitled to carry his cause to the Zillah Court, unless the amount be very small; then, if either party is dissatisfied with the decision of the Zillah Court as being contrary to law or the rules of practice, an application for a second or special appeal may be made to the Sudder Court at the Presidency.

2117. First of all, what does the Zillah Court do when it gets an appeal sent to it?

The evidence of the witnesses and the whole record is made up and sent to the Zillah Judge; he looks over his file and makes a distribution with reference either to the nature of the case or the state of the files of the other judicial officers and of his own file; some cases he keeps himself, and some he sends to his officers.

2118. Supposing he sends it to the Principal Sudder Amin, if an objection is taken to the decision of the Sudder Amin, is there any appeal from him?

If the objection is taken upon the merits, there is no further appeal; if the complaint be that the Principal Sudder Amin has decided contrary to law, or that he has violated the rules of practice, then an application for an appeal may be made to the Sudder Court at the Presidency, the Sudder Court Judge, whether *primâ facie* the fact be so, and they either admit the appeal or reject the application. If the application is rejected, the decision is final; if the application is [illegible]; then the whole record is sent to the Sudder Court; and on this second or special appeal the decision of the Sudder Court is final, unless the amount be above

above 10,000 rupees (1,000 *l.*), in which case an appeal lies to the Queen in Council.

David Hill, Esq.

10th March 1853.

2119. Lord *Monteagle* of Brandon.] Where a reference is made to the Sudder Amin, is not that reference made frequently from a European Judge to a Native Judge?

Never.

2120. Are there not Sudder Amins who are Natives?

Yes; but there never can come an appeal from an English Judge to a Native Judge, because there is only one English Judge in a zillah, and that Judge is the highest authority.

2121. Earl of *Ellenborough.*] There is nothing to prohibit a European from holding the office of Moonsiff?

Europeans do hold it: if the observations applied to Englishmen merely, it is true; but not to covenanted servants.

2122. Lord *Elphinstone.*] You say that there is only one European Judge in a zillah, but you are aware that at Madras there used to be Auxiliary Judges?

That is very true: but, in fact, it was only making two zillahs of one, in a great measure.

2123. Might the Zillah Judge refer a case which had been decided by the Auxiliary Judge to a Principal Sudder Amin?

No, he could not.

2124. Not in the manner which you have just pointed out, by distributing the business among his inferior Judges?

No, he could not.

2125. Earl of *Ellenborough.*] The Auxiliary Judge is his co-equal?

Yes.

2126. *Chairman.*] Are there more appeals from the European Judges or from the Native Judges?

More from the Native Judges, because the amount of business transacted by the Native Judges is so much more; in original cases ninety-nine-hundredths of the whole: there is only one per cent. of the original suits decided by European Judges.

2127. Do you know what is the proportionate number of appeals from the European and from the Native Judges?

I do not know. The impression upon my mind is, that there is a larger proportion from the European Judges; and there is this peculiarity, that a larger number of appeals from decisions of the European Judges are reversed than from the Natives. The apparently natural inference may not be a true one, but the fact is so. My own conjecture is, that the Sudder Court exact a more precise observance of rules from those of their own cloth than from the Natives, and that they accept work done in a looser manner by the Native Judges. They perhaps may pride themselves in finding out flaws in the proceedings of their brother servants. But, whatever the cause may be, the fact is so, that a larger proportion of the decisions of the English Judges is reversed; and I think, also, that the proportion of appeals from the English Judges is larger.

2128. Earl of *Ellenborough.*] Are not the rules of proceeding very technical?

A great deal too much so.

2129. So that a defect in form vitiates the whole proceeding?

Yes; I think that has arisen chiefly from an anxiety to provide the means of appeal. The original Judge, the Judge of First Instance, is distrusted, and therefore provision is made for an appeal, so that the Appellate Jurisdiction shall have the same means of judging that he had: there is no confidence placed in him, and therefore no judgment is allowed to be of a summary nature. Accordingly, the whole of the evidence is recorded: all the exhibits put in evidence are recorded; and, when the record is made up, the whole is transmitted to the Appellate Court, however small the case may be. In the cases I have been speaking of, where the average amount is not above 3 *l.* or 4 *l.*, still the trial is as formal and complicated as if it concerned a valuable estate. This is the great defect of the system.

David Hill, Esq.

—

10th March 1853.

2130. It has been stated that an error in the amount of a stamp will sometimes be held to vitiate the whole proceeding; is that so?

According to my recollection, such an error may be rectified by paying the difference to the Stamp Office; it had been so, but my impression is, it is not so now.

2131. Lord *Monteagle* of Brandon.] Has not much difficulty arisen from the attempt to introduce all the technicality and precision of the English system, English pleading, and English judicial rules?

I am not sure that they are English, but they certainly are much too technical, and too much in detail; they leave so little in the way of confidence to the Judge of First Instance.

2132. Have not the principles of English pleading been introduced into the Indian Courts, with all its technicality and abstruseness?

I think not; I think the system of pleading is much more simple in India; there is only the declaration, the answer and the reply; there is no such thing as special pleading.

2133. Are there not many decisions proceeding upon purely technical points, rather than upon the merits of the case?

Constantly. With regard to a former question, as to the possible number of appeals, I ought to explain that not only is there the first appeal of right, and the second appeal, the special appeal, upon particular grounds; but the Sudder Court very often discovers that there has been a flaw in the proceedings, that the rules of practice of the Court have been violated, and then they remand the case to be tried over again *de novo*, so that there may be ultimately a third trial; and an appeal will lie from that third trial; and so it may go on *toties quoties*, till the funds of the parties are exhausted.

2134. Lord *Elphinstone.*] Are witnesses obliged to attend upon each of those trials?

Yes.

2135. Is not that a very great hardship?

A very great hardship; they have to wait long in attendance very often

2136. *Chairman.*] Was not there formerly an intermediate Court of Appeal, called the Provincial Court?

Yes; the Provincial Courts ceased about 20 years ago, all over India.

2137. Do you consider the abolition of those Courts to have been an improvement?

In some respects it was: the immediate object was to expedite business, and to save the expense of an establishment that could be dispensed with; but I think that upon the whole it is an improvement; the business is better done: but you have not the same degree of superintendence over the local officers that you had before.

2138. Do you think that the system of appeal which you have described could be modified, so as to diminish the number of appeals?

I think it is very evident that the employment of Native Judges to transact the great bulk of the judicial business of India has been a great improvement; I believe there are many excellent Judges amongst them; and it would be a very great improvement if, when you find a good Native Judge, he was allowed to try small causes summarily, as the Small Cause Court does at Calcutta: if you could trust him as to character and competent knowledge and capacity, and he were merely to hear the plaint and, without recording the evidence, to decide the cause, where the amount is not above 3 *l.* or 4 *l.*, and if his decision were conclusive, it would be a great improvement in saving time and expense to the parties, and the attendance of witnesses would be obviated; but that will come, I think; I look upon it to be an improvement which we have reason to hope for.

2139. Earl of *Ellenborough.*] Do you think there would be any advantage in having a Punchayat to find the facts of the case, and to take from the Judge the power of deciding upon the facts, and leaving the law to him?

The law provides for that; in any case, the parties can call a body of assessors into the Court, to give their opinion what the facts are.

2140. Is

David Hill, Esq.

10th March 1853.

2140. Is that often done?

It has not been very successful; it has been done in the North-western Provinces more than anywhere else; but the great difficulty is in getting any respectable Natives to trouble themselves about the matter; the only class of persons they were able to employ were the officers in the public offices: it has been a failure.

2141. Lord *Elphinstone*.] Did it not differ from the Native Punchayat in this respect, that in that case both parties agree that the case shall be decided by the arbitration of those persons; whereas, when you have assessors, they are nominated by the Judge, and that is a course which the people do not like?

They are merely to assist the Judge; but the Natives do not like to embroil themselves; they are afraid of incurring odium and trouble unnecessarily.

2142. *Chairman.*] Does not it sometimes happen that an appeal lies from a Native Judge, a Sudder Amin, who, in point of age and knowledge and experience, is superior to the higher Judge to whom the appeal is taken?

It may be so; and it frequently happens, on the second appeal, that the judgment of the Zillah Judge is reversed by the Sudder Court, and the first decision is affirmed in the final result. I do not see why it should not generally be the case that a Native Judge should be better than an English Judge.

2143. Is not the opinion held by some persons, that it would be a good thing to abolish the appeal to this country from the Sudder Court?

There was an idea of having a Court of Appeal in Calcutta; but Calcutta, with reference to most parts of India, would be as far off as England; and you would probably, in certain branches of the law, have a train of decisions at variance with those which prevailed in England. From the great facility of communication, England is not nearly as far off as it used to be; and if the Court cannot be brought near the suitor, I think it is much better that the suitor should have to come to England than that he should have to go from all parts of India to one particular part.

2144. Will you state what are the Criminal Courts?

The same officers exercise criminal and civil jurisdiction. The Sudder Court is the Supreme Criminal Court, and no capital sentence nor sentence of transportation takes effect without their sanction; the trials in those cases are submitted to them. The Zillah Judge is a Sessions Judge; he tries all heinous offences in the capacity of Sessions or Criminal Judge. The prisoners are committed for trial by the Magistrate; up to a certain point, in cases of assault and petty offences, the Magistrate has criminal jurisdiction; and there are Deputy Magistrates, uncovenanted servants, some Natives and some Englishmen, and some half-caste, who have been introduced of late years. Some of the Native Civil Judges, the Principal Sudder Amins, have been invested with criminal jurisdiction.

2145. Do you think there is any objection to the magistrate exercising conjointly the office of Magistrate and that of head of the police?

I think it so desirable to combine authority, in order to make it efficient, in India, that there is great advantage in the arrangement: you cannot attempt to introduce constitutional checks in India; you must restrain and punish transgressions when they are detected; but you cannot waste and destroy authority, by setting up one part of your system as a check upon another, in the hope of making the two produce the right line of conduct.

2146. You do not think that there is any force in the argument, that a man who has been occupied in getting up evidence, and perhaps rather doubtful evidence, against a suspected person, is hardly likely to act with perfect justice when the case is tried before himself?

I think that, abstractedly, there must be force in the remark, but the Magistrate has very limited authority in such cases.

2147. What was the original salary of the Deputy Magistrate?

The Deputy Magistrate received from 200 to 400 rupees a month; that would be from 240 *l.* to 480 *l.* a year.

2148. Earl of *Ellenborough*.] Was not the salary originally fixed for the Deputy Magistrates in Bengal reduced by the orders of the Court of Directors?

David Hill Esq.

9th March 1853.

I think it is very likely; that is the general tenor of the orders regarding new establishments, that the salaries are too liberal. When the office was newly introduced, cautions would most likely be given against over-liberality.

2149. Lord *Monteagle* of Brandon.] When was the office of Principal Sudder Amin established?

I do not remember, but it is of long standing; as much as 30 years ago.

2150. Was it not in the year 1837; and was not the office of Magistrate established in the year 1843, and that of Deputy Collector in 1833, two offices to which Natives have been appointed?

Yes; and Englishmen, in some instances.

2151. How have those duties been performed?

Very satisfactorily, I believe.

2152. *Chairman.*] You stated that British subjects are not subject to those Provincial Courts in criminal case?

No, they are in civil cases, not in criminal.

2153. Do you think that that system is justifiable and convenient?

It is extremely inconvenient; so much so, as to lead in many cases to an obstruction of the law. A case against a British-born subject frequently does not admit of being tried, unless he belongs to the army, in that case, all offences committed at a distance of 120 miles from the seat of government are cognizable by a military tribunal, although there may be nothing military in the character of the crime, the prisoner is amenable to a military court. But, with the exception of military persons, an Englishman committing any offence, except an assault (which may be tried by a Justice of the Peace on the spot), can only be tried at the Presidency; and the prosecutor, as well as the prisoner and the witnesses, must be sent to the Presidency from a distance, perhaps, of 500 or 1,000 miles.

2154. Has any attempt been made to put an end to that anomalous state of things?

It is under the consideration of the Government of India, whether the jurisdiction of the Company's Criminal Courts shall not extend to Englishmen as well as others; it does extend to foreigners.

2155. Lord *Monteagle* of Brandon.] Do you remember the circumstances under which an Act was prepared in India and sent over to England, for the purpose of remedying that, I mean the Act commonly called the Lex Loci Act?

The Lex Loci had reference only to civil jurisdiction.

2156. With respect to civil jurisdiction, it met the anomalies which you have been describing with regard to the want of power of dealing with Englishmen in the Mofussil, do you remember the circumstances under which that Act was sent over, and how it was dealt with?

Perfectly, but the writings which took place upon that subject had no reference to the jurisdiction of any particular tribunal, but merely to the law that the tribunals should administer: it was not to give jurisdiction to the Company's Courts over Englishmen.

2157. When that Lex Loci Act was sent over here, how was it dealt with in England?

There was no Act. Mr. Cameron wrote at great length upon the subject, very learnedly but it had no reference to the jurisdiction of any particular tribunal. The object of it was not to give jurisdiction to the Company's Courts, but to settle what law was to be regarded as the general law of India. He conceived that the law of India ought to be the law of England, and entered into a very learned discussion upon the subject; but it had no reference to the jurisdiction of particular tribunals, least of all to the trial of English offenders. He argued that, as England had acquired the Indian Empire, the English law ought to prevail in the country. His view, in a very learned paper which he wrote upon the subject, was, that it was not Hindoo law, nor Mahomedan law, but English law that ought to be adopted.

2158. Mr. Cameron, in his examination before this Committee, described the existing state of things, which it was the object of the Lex Loci law to remedy, in these

these words: "Except in the three Presidencies, there is nothing but personal laws—the Mahomedan law for Mahomedans, the Hindoo law for Hindoos, and no law for anybody else?"

David Hill, Esq.

10th March 1853.

Yes; but that had reference entirely to civil rights, not to crimes.

2159. But that being the state of things, and there being at that time an actual preparation for a statutable remedy, can you inform the Committee how the statutable remedy was dealt with; was it entertained, or was there a prohibition against entertaining it?

I do not think there was either the one or the other. There was a great deal of writing upon the subject; but there was no proposition made that required either sanction or rejection.

2160 *Chairman.*] With regard to the particular point of the liability of British-born subjects to the jurisdiction of the Provincial Courts in criminal cases, how does the matter stand now?

It was proposed within the last two or three years, with reference to a particular case that occurred, to deal with the difficulty that arose regarding a British-born subject: the question was whether the prisoner was a British born subject or not; and this led to an inquiry into the state of the law. The Government then recommended that the jurisdiction of the Local Courts in criminal matters should be extended to British-born subjects, and framed three Acts for that purpose. Those three Acts, in the mode that is laid down for legislative proceedings, were published with the sanction of the present Governor-general, the object being to extend the jurisdiction of the Company's Courts in criminal matters to British-born subjects. Those Acts came home in due course; doubts were entertained whether they were in a state to be passed, and those doubts were expressed in a Despatch to the Government of India, who were instructed not to adopt the proposed measure without sending it home for the previous sanction of the authorities in this country.

2161. Earl of *Ellenborough.*] Was that legal?

I believe it is so.

2162. Have the Court any such authority?

We have been informed so on high legal authority. This answer was in the hands of the Government of India when the Governor-general returned to the seat of government. He had been in the North-western Provinces. He inquired what law would be administered by the Company's Courts when they came to try a British-born subject, and was told that the foundation of the law was the Mahomedan law, modified by the practice of the Courts, and by the enactments, from time to time, of the Local Legislature: then Lord Dalhousie withdrew his concurrence in the proposed measure, and stated that he could not agree to allow Englishmen to be tried as Mahomedans.

2163 Lord *Elphinstone.*] Have not the whole of the punishments of the Mahomedan law been altered?

Yes.

2164 And has not the rule of evidence been also altered?

Yes; this led Lord Dalhousie to turn his attention to the authority that had been transmitted from this country for the enactment of what is called the penal code, and he stated that the difficulty would be obviated if they acted upon this authority, and carried the penal code into effect, that then it would be a law that the Company's Courts might be allowed to apply to British born subjects. But in the meanwhile the answer from the Home authorities had arrived, that they were not to carry that project into effect without submitting it for previous sanction; upon which a reference was made to know whether a penal code should not be enacted, and the measure carried through. The answer was that they were to revise the penal code as they saw fit, and to carry it into operation. Upon which the Government undertook the revision of the code. The fourth member of the Council, the Legislative Member as he is called, whose duty was exclusively in the Legislative Department (the late Mr. Bethune), with his colleagues, commenced this task, and it was completed at the end of a twelvemonth.

2165. Earl of *Ellenborough.*] Must it not have been without his colleagues, as they would have no time to give to the subject?

David Hill, Esq.
——
10th March 1853.

It was arranged that they were to give a great deal of time to it; they were to devote one day in the week specially to this duty; and Lord Dalhousie, who had occasion again to be in the Upper Provinces at the time, regretted very much that he would not be able to share in this work, but directed that what was done should be communicated to him from time to time. Accordingly, after the lapse of a year or so, there was a complete revision made of the penal code; but, when it was done, the code was so altered that it did not look like the same thing. Lord Dalhousie, when it was communicated to him, expressed approbation of it. He said it seemed to be drawn out with great pains, and in a very luminous manner; but the phraseology and arrangement were so much altered, that it was quite a new drawn code, and he stated that the sanction which had been given for passing the former code did not seem to him to apply to this code, and that at any rate it was a matter that was fit to be decided at home. He requested that the authorities here would let the Government know whether they approved of this revised code. The answer, transmitted a year ago, gave full authority to enact a code such as the Government might approve of; and we have not heard what has been done since.

2166. Lord *Monteagle* of Brandon.] Will you have the goodness to state the date at which that full power was given by the Directors to the Government of India to enact any code they approved of?
The first authority in 1848; the second in January 1852.

2167. And we are now in the year 1853?
Yes.

2168. You stated, in your former evidence of last year, that about the time you were then giving your evidence, which was on the 26th of June, the reply of the Government of India might be expected to that?
Yes.

2169. Has any reply whatever been given upon that subject since?
No.

2170. Therefore the code remains in just the same state now as it was at the time it was sent over by Lord Dalhousie?
As far as we know, it may remain in the same state; but the authorities in this country have no further information on the subject.

2171. *Chairman.*] This being a code comprising the whole criminal legislation of India, it would naturally require great consideration before it was carried into effect?
The code consists of a scientific definition of all offences, and the allotment of appropriate punishment for each offence; it does not provide for the administration of the law. but confines itself simply to an accurate definition of crime, and the allotment of punishment.

2172. Lord *Monteagle* of Brandon.] In your evidence on the 26th of June you stated: "In the beginning of the present year" (that is, 1852), "only a few months ago, when Mr. Peacock, the present fourth member of Council, was about to proceed to India, the Court of Directors, in answer to a reference from the Government sending home this revised code, without deciding in favour of one or the other code, instructed the Government in communication with Mr. Peacock, to enact as law such penal code as they might approve. It was not put as a choice between the two, but the matter was left entirely to the discretion of the Governor-general in Council, in concurrence with the new fourth member of Council." Now I understand you to state, that this unlimited power so given to the Government of India, of passing such a code as they might approve, did not, to your knowledge, lead to any practical result?
We have no official information on the subject.

2173. Lord *Broughton.*] Is it not the fact, that just before Mr. Peacock went out, he had undertaken to look over this code, and to give to the authorities here his opinion upon this important matter?
I do not know that he undertook it, but he tried it.

2174. He did undertake it?
It may be so.

2175. But

David Hill, Esq

10th March 185

2175. But afterwards he declined doing so?
Yes.

2176. Is it not the fact that when he went out he was enjoined by the Home authorities that his first work, when he got to India, should be the consideration of this code?
I think that was the strong impression upon his mind. There were no official instructions; they were all verbal. But I had personal communication with Mr. Peacock, and I believe that was the impression upon his mind.

2177. In consequence of his not being able to undertake that work previously to leaving England, did he not engage that his first work, when he got to India, should be the revision of that code?
I think that is likely to be the case, though it is not within my knowledge; but I am not at all surprised at the difficulties. I think the pressure of other matters must constantly interfere with a work of that kind.

2178. Lord *Monteagle* of Brandon.] Have not difficulties and delays been felt with respect to various other legislative measures which have been proposed in India by the Law Commissioners, and which have not passed to this day?
Yes, I think so.

2179. Lord *Wynford*.] Was there not also this additional difficulty proposed attending the measure, that there was an alteration of the whole phraseology of the law in the very first sketch that was made, and which was afterwards altered by Mr. Bethune?
Mr. Bethune objected to the phraseology. He said that new terms were introduced which were unknown to the English law, and that although they might be etymologically more correct, yet the meaning of the established terms was well understood; and I think he apprehended that the same language could not be learned by future legislators, and that it would make a jumble of the whole code.

2180. Earl of *Ellenborough*.] Was it not a most important thing that the code should be translatable into the native languages?
There was a general apprehension at first that it would not be so; but I think that apprehension has disappeared, and that, in the opinion of persons who are considered very competent judges, the meaning is perfectly translatable.

2181. Is a translation made by the authority of any law?
A translation is made, but it is always liable to be disputed, and then the original would be referred to.

2182. Is any translation issued by authority by the Government?
It is issued by authority, but if the counsel for the prisoner, or the party, alleged the translation to be erroneous, he would be allowed to refer to the original to prove that it was so; but it is issued by authority.

2183. Lord *Monteagle* of Brandon.] As you have stated that the Court of Directors have given to the Government of India full authority to adopt such a code as they thought fit, does not that practically amount to a decision by the Court of Directors, that any difficulty with respect to translation should not be an insuperable obstacle to the adoption of the code?
I think so. I think the general impression is, that the difficulty would not be formidable, though that was the apprehension at first.

2184. Are you aware a specimen was made, and laid before the Committee, of the translation of the two most difficult chapters in the code?
Yes.

2185. *Chairman*.] This code applies only to criminal matters?
It was a definition of crimes and punishments.

2186. Would it not be desirable to have the same thing done with regard to civil procedures?
The course of procedure chalked out for the Law Commission was, that all the branches of law were to be revised by them. The penal code forms a very small portion of what they were expected to do. The Act provided that the Indian Law Commissioners "shall fully inquire into the jurisdiction, powers and rules of the existing Courts of Justice and Police Establishments in the said territories,

David Hill, Esq.

10th March 1853.

and all existing forms of judicial procedure, and into the nature and operation of all laws, whether civil or criminal, written or customary, prevailing and in force in any part of the said territories, and whereto any inhabitants of the said territories, whether Europeans or others, are now subject, and the said Commissioners shall from time to time make reports, in which they shall fully set forth the result of their said inquiries, and shall from time to time suggest such alterations as may, in their opinion, be beneficially made in the said Courts of Justice and Police Establishments, forms of judicial procedure and laws, due regard being had to the distinction of castes, difference of religion, and the manners and opinions prevailing among different races and in different parts of the said territories." That covers an enormous space, hardly one step of which has yet been traversed.

2187. Are not those desirable objects?

The law stated so. The Law Commissioners were appointed with the view of going over all this ground.

2188. What, in your opinion, would be the best mode of giving effect to the wishes expressed in that law?

It seems to me that the great defect at present is this: it was thought at the time that the Law Commission would be able to accomplish the whole vast undertaking by one great effort, and that the work being so done, the Legislative Council, identified with the Executive Government (except that the fourth member of Council was added to assist them in such matters), would have nothing to do but to give its fiat to this new code of all kinds for all races.

2189. Earl of *Ellenborough*.] Can any one code of laws be prepared which shall answer the requisition of the Act of Parliament, inasmuch as the castes, religious habits and opinions of the people differ in different parts of the country?

It was supposed at the time that the Commission could, within a certain definite time, have accomplished this object; and that all that was to be required of the Legislative Council was to give its fiat to the work that had been accomplished by the Law Commission; but it proved a total failure; the Law Commission did not answer its purpose.

2190. Lord *Monteagle* of Brandon.] Will you have the goodness to prepare an account of what the Law Commission has done, and upon how many of those various subjects to which you have adverted they have discharged the duties that were committed to them?

I think they have done very little of what the Act prescribed; they have gone into other inquiries, but not into those.

2191. Does not that part of the statute to which you have adverted seem to contemplate visits of inquiry, on the part of the Commissioners, to different parts of India?

It probably does; they wished to make their examination ambulatory.

2192. What prevented it?

I suppose they were fully engaged at head-quarters.

2193. Are you sure that that was the reason, and that it was their engagements which prevented it, and not the act of a superior authority, which said that they were not to make such visits of inquiry to different parts of the country?

They asked leave to go, and the Government did not see ground to comply; but I dare say there was good reason for withholding their sanction.

2914. Do you remember what happened with respect to the recommendations of the Commissioners as to the improvement of the Small Debt Courts, for instance, at Bombay; did they not make a recommendation upon that subject?

I heard that there was a Bill which Sir Erskine Perry originated about the Small Cause Court at Bombay, adopted, I believe, by the Law Commission.

2195. What became of that Bill?

The result has been the establishment of a Small Cause Court.

2196. Was not there an intermediate result on the part of the Court of Directors?

I do not bear it exactly in my memory, but the impression on my mind is, that

the

David Hill, Esq.

10th March 1853.

the Rules of Court were sent home by the Supreme Court of Bombay to the Queen in Council; and that upon reference to Lord Campbell and Mr. Baron Parke, they were disallowed.

2197. The question does not refer to the Rules of Court, but to a proposed statutory provision that was sent over from India, with the authority of the Law Commission, and with the authority of the Government of India; can you state what became of that recommendation of the Law Commission which has come over to England?

I think the Privy Council disallowed it as illegal.

2198. Was not it discussed at the India House, and was not that Act disallowed by the Court of Directors?

I remember it came before the Privy Council. It was not a question over which the Court of Directors had any cognizance.

2199. You say that it originated with Sir Erskine Perry; are you not aware that a plan was sent as a draft of an Act to the Supreme Council of India, and that Lord Hardinge approved of the measure, and read the Act a first time, and fixed a day for the second reading, and that the Act was stopped by the Court of Directors?

My persuasion is, that the Court of Directors acted in pursuance of the views of the Privy Council, and that the proceeding was regarded as illegal.

2200. Earl of *Ellenborough*.] The Court of Directors have not, of their own authority, power to disallow an Act passed in India, have they?

The Court of Directors have the power of disallowing anything that is done by the Government of India.

2201. Is it not the fact, that all that they can do under the Act of Parliament is to direct the Government there to repeal the Act, but that they cannot disallow it of their own authority?

If I remember rightly, express authority is given to the Court of Directors to disallow any Act. Your Lordships asked if I could suggest any means by which legislation could be made more effectual in India. With regard to the Law Commission, I should say that it was too much disjoined from the Government. They did not always act in unison with them. They were following out views and speculations of their own. That difficulty was in some degree, but not effectually, cured by placing the fourth member of Council at the head of the Law Commission. Still they were working in their own way; they were not doing the work of the Government. My personal idea on the subject is, that the Legislative and the Executive Government are too much identified, and that the duties of the Executive Government, which must always be imperative when they are of an urgent nature, set aside the duties of the Legislature. It is utterly impossible for the Government, when it is waging war, or when any other subject of urgent interest attracts its attention, to engage itself in the deliberations of a Legislative Assembly. My view is certainly that the Legislative Council ought to be moulded in quite a different form; it ought never to be allowed to act without the concurrence of the Government; there must be a perfect union of authority in India. But the Legislative Council ought to be greatly enlarged. The Governor-general, besides his executive colleagues, ought to have in the Legislative Council the assistance of the Judges of the Supreme Court, or some of them, and some of the Judges of the Sudder Court, and the law adviser of the Government, the Advocate-general, and other individuals selected for the purpose. The fourth member of Council, assisted by a legislative secretary, and whatever other means may be necessary, should receive the instructions of the Executive Government, as the Attorney-general and other law officers here receive the instructions of the Ministers of the Crown to frame a law on such a subject; that ought to be submitted to a meeting of the Legislative Council, not for them to write minutes about, or to hold themselves answerable for the phraseology of the law, but to decide whether its principles are such as they approve; a sort of second reading of the Bill; that having been done, the Bill ought to go back to the fourth member of Council, to carry out the views of this Legislative Council; the Bill might then come into Committee (as it were), at another meeting of the Legislative Council, clause by clause; but I do not think that the Governor-general and his colleagues ought to be held responsible for the mode in which a particular act of legislation is to be

David Hill, Esq.

10th March 1853.

framed. In this way, whatever the enactment was, it would always be the handiwork of the fourth member of Council and his staff. He would be employed in revising the penal code, or doing whatever was to be done; and he would bring it before the Legislative Council at its meetings. There ought to be no minutes, no writing, but only oral discussion, and a vote whether the proposed law should be enacted.

2202. Do you think it would be an advantage or a disadvantage if you were to associate with the Executive Council some eminent Natives, well acquainted with the customs and feelings of the people, who would not be called upon to exercise any executive function, but merely to give assistance in deliberation?

I think the Natives would always be consulted by the head of the Government, or his colleagues or officers; but I never knew a Native who, if he were associated in such a Board with the Governor-general and his colleagues, would be able sufficiently to assimilate his ideas and manners and language with those of his associates. They would generally be merely submissive, and give a dumb acquiescence; at other times they might be set on by intriguing men to raise difficulties in the Council or with the public. All that is wished for would be gained by means of private communication with them, but never by associating them with men with whom they cannot feel themselves equal; they never would be upon such terms as to be able to take a useful part in the Council of the Legislature.

2203. Earl of *Ellenborough.*] Whatever might be the great advantages of extending the Legislative Council, would it not be dangerous to deprive the Governor-general in Council, as now constituted, of all power to make, on a sudden emergency, any law which might be required for the public service?

Probably that power ought to be reserved at all times, and it might be done without materially interfering with my general idea.

2204. Lord *Monteagle* of Brandon.] You have read the clause of the Act of Parliament appointing the Legislative Council; does not that clause imply the permanent action of the Legislative Council?

Certainly it does not point to its termination; but I should rather draw th inference that, when its task was accomplished, it was *functus officio.*

2205. Are you not aware that during the time when the Legislative Council was in action, and vacancies occurred, a communication was made by the Indian authorities, that those vacancies would not be filled up, as it was the intention of the Company to apply to Parliament for the repeal of that clause?

That was the case.

2206. Was any such application made to Parliament for that repeal?

No application was made to Parliament; but I do not bear in mind at this moment in what way that suggestion dropped.

2207. Nevertheless, by declining to fill up the vacancies, has not the East India Company practically come to the same result as if Parliament had repealed that clause?

It has; the Law Commission is practically extinct.

2208. It is extinct by the act of the Company, without the repeal of the clause which implies, not finality, but permanence?

Yes.

2209. Earl of *Ellenborough.*] Do you happen to know what was the cost of the Law Commission in the first instance, including the Legislative Member of Council?

There were four members and a secretary; it must have cost, besides the Establishment, I suppose, 25,000 *l.* or 30,000 *l.* a year.

2210. They were to have the highest salary given in India?

Yes; it was expressed in indefinite terms: there was some doubt what was exactly meant, but it was taken as not less than 5,000 *l.* a year.

2211. Do you think that the whole, including the Legislative Member of Council, cost less than 50,000 *l.* a year?

Including the Legislative Member of Council, I should think it probably cost at least [illegible]0,000 *l.* a year.

2212. What

David Hill, Esq.

10th March 1853.

2212. What would it have cost if they had travelled?
It must have cost a great deal more.

2213. Would it not have cost 40,000 *l.* a year more?
I think that is a large estimate, but it would have cost a great deal more.

2214. Do you think that their camp would have had less than 4,000 people in it, including all their office establishment, and guards and followers?
It is very possible.

2215. *Chairman.*] Can you state how the judicial officers are appointed?
All the judicial officers are appointed by the Government, and removed by the Government, at their discretion; they hold their offices only during pleasure.

2216. Lord *Monteagle* of Brandon.] The covenanted servants who become Judges in India are all educated at Haileybury?
Yes.

2217. The course of education at Haileybury is two years?
It cannot be less than two years.

2218. Is there not a professor of great eminence for the legal department of the education?
There is.

2219. Are not the Court of Directors cognizant of the proceedings at Haileybury, and of the degree of distinction which the students obtain in the examinations?
The examination is totally independent of the Court of Directors, but they are perfectly cognizant of it.

2220. Are there any prizes specially given for students who distinguish themselves in law?
In law, as in all other classes.

2221. When writers or candidates are appointed, and sent from Haileybury to India, can you state whether any selection is made amongst the writers landing in India for judicial appointments?
None; and I should think it would be attended with great injury if any such selection were made. The course taken after they arrive in India is, that a civil servant, as soon as he has acquired a competent knowledge of the native languages, which he generally does in from six months to eighteen months, is then placed in the office of a Magistrate or a Collector, where he becomes acquainted with the ordinary duties of the public service, and especially acquires a familiarity with the native habits and manners, and shakes off something of the disadvantage of being a foreigner.

2222. Then supposing a case in which, out of a great number of candidates landing in India, there are three or four who have been peculiarly distinguished by their acquirements in law at the college, there would be no greater chance of those distinguished students in legal pursuits being appointed to judicial offices than to any other branch of the civil service?
I think in such a case the inference would be, that they were young men of distinguished ability, and not particularly that they promised to be better lawyers than their fellow students. But I think it would be attended with very great injury if a particular class of the service were drafted off for one branch of duty. It is out of the whole body of the civil service that provision is to be made for carrying on the administration of a vast empire. There are about 600 English gentlemen who are set over 60,000,000 of natives of India, to carry on all the branches of civil administration, without any aid from the indigenous agency of a resident gentry and an unpaid magistracy. Every thing has to be done by public functionaries in India. Now if the best men were drafted off for one branch of the service, the efficiency of the whole body would be very much impaired. The Government have to select instruments for all sorts of public duty out of this body.

2223. Are the Committee to understand that the selection is made indiscriminately for the Judicial service, for the Revenue service, and for the other branches of civil service in India, without reference to the qualifications or previous acquirements of the party?

David Hill, Esq.

10th March 1853.

The first training in India of a young man for public business is an acquaintance with the native habits and manners, and, if possible, a sympathy in favour of the natives.

2224. But you are aware that, for a considerable period of time, certainly from the year 1831 up to the present time, the subject of a more peculiar education of the civil servants in India for judicial service has been frequently under discussion?

Yes; but I have the opinion of the highest authority, that of Sir Thomas Munro, upon the subject. He looked upon it as a very bad training to begin with, teaching young men merely to be proficients in litigation; and that the great object was to make them familiar with the native habits, and particularly to create a sympathy and good feeling in their minds towards the natives.

2225. Lord *Elphinstone.*] Is not that familiarity with the native habits, and that sympathy with the native feelings, more readily acquired by serving an apprenticeship, if I may so speak, in the Revenue branch of the service, than by going directly to a Judicial branch?

I have no doubt whatever that it is by far the best training. Besides, it would not answer the purpose if you were to select a portion of the service, and endeavour to make lawyers of them upon any indication of talent of that sort at college, or from their own choice. Even in England, out of those who select the law as their profession, there is a very small proportion who, at the end of 10 or 20 years, would be looked upon as highly gratified to fill the bench; and yet they have inducements to exertion and opportunities of improvement that are altogether wanting in India. My idea is, that they are much better servants in India as they are now. If you brought them up in the manner suggested, no doubt some of the young lawyers might have acquired a greater aptitude for the technicalities of litigation, and perhaps a certain dialectic subtlety, but I should think they would lose a great deal of their natural strength and buoyancy of mind, and would never acquire the same kindly feeling and intimate knowledge with regard to the natives whom they are sent to govern.

2226. *Chairman.*] If their first knowledge of the native character were gathered in the courts of justice, would not they be inclined to take the worst view of the native character?

In a paper which I have brought with me, Sir Thomas Munro puts it very strongly in that way, that they would see the natives always under unfavourable circumstances, excited by hostile feelings towards each other. My impression is, besides, that the Company's civil service is at present duly qualified for the discharge of the judicial office in a simple state of society, such as exists in India. The bulk of the cases are questions of debt of small amount.

2227. Lord *Monteagle* of Brandon.] Does not the present system lead to this result, that covenanted servants are now appointed to a judicial office in which they have to act upon appeal cases before they have acted in a subordinate tribunal?

Yes, I believe that is the case. But, in a country like India, with the simple habits of the people, the administration of justice does not differ from the transaction of any other public business, but is, in fact, merely the authoritative application of intelligence and truth to regulate the social affairs of life, which is the same thing as an officer in the Political Department or the Revenue Department has to do in all the business that comes before him. He can see who is in the right and who is in the wrong.

2228. Do you think that the system of interchangeableness between the Political, Revenue and Judicial Departments ought to go on throughout the whole of a civil servant's life?

I think it is the life and soul of such a service. If, on the contrary, you were to allot them in the beginning, and to say that, out of about 600 public servants, a certain portion of them were to be lawyers, and that another portion were to be in the Diplomatic line, and another portion in the Revenue line, the consequence would be, that they would be unfit for any thing else but the line for which they were trained; and in many instances not particularly fit for that. It is much better to interchange them.

2229. You would see no objection to a person who had been in the Revenue or the Political line for 10 or 12 years being at once transferred from that department to the Judicial Department?

The Judicial Department, from the nature of the cases which they have to try, is very different from what it would be here. In this country, in a highly refined and very opulent society of long standing, property and all the relations of life have become so complicated that it is often extremely difficult to trace out the law that ought to regulate them. It is done, not by positive rules, but by Judges and lawyers finding out a precedent that is to regulate the present case, or a principle that seems to have governed a similar case before; and sometimes the decision proceeds upon a very fanciful analogy to some former precedent or principle; and after all, the learning and ingenuity of Judges and lawyers here are less directed to the law that affects the merits of the question at issue than to the law that affects the rules of procedure by which the Court will allow its merits to be ascertained. If it were worth while to train up a portion of the Company's civil servants in the mysteries of a craft of that kind, they might possibly succeed; but I think the government of the country would be much worse administered, and much less justice would be done. There would be more knowledge of the intricacies of law, but it would not be law that would be usefully applied to the administration of justice.

2230. (*Chairman.*] Is it not the case that a great deal of legal business is mixed up in the collection of the Revenue, and that the Collector of the Revenue has to act almost as a judicial officer?

He has, constantly; but, in truth, every public servant in India has to act as a judicial officer. Most questions that come before a man in any branch of public business partake of a judicial character. There are two sides to a question; there is truth which has to be sought for, and to be found out; and that is essentially a judicial proceeding. Although it is not a subject of litigation, and is not hampered by the forms of a court of justice, it truly partakes of a judicial character; and that is the sort of judicial business to which the Company's servants ought to be confined as far as possible. My idea is, that the remedy which is required in India is quite of an opposite sort: instead of making lawyers of your civil servants, you ought to make litigation as easy and simple as possible, and not hamper it with intricate forms of proceeding: and when you have good Judges, you should enable them in small causes to decide summarily and finally. I do not see why the Company's civil servants should not superintend the administration of substantial justice, without being initiated into the mysteries of an artificial science, which is intelligible only to adepts in it.

2231. Lord *Broughton.*] Did not the East India Company, about the year 1819, put Sir Thomas Munro at the head of a Commission to inquire into the working of the judicial system at Madras?

In 1814 or 1815 it was.

2232. Did Sir Thomas Munro make any suggestions, as Chief Commissioner, for the improvement of the system?

Yes, he did.

2233. Were they acted upon?

To a great degree; but he was not allowed to carry it as far as he would have liked.

2234. You were in India at the time?

I was.

2235. Was any considerable portion of his recommendations adopted?

A great deal was, but the whole judicial system was left too much hampered with forms. It arises from this, that you have not confidence in the agent that you are obliged to employ: if you had, if you felt that a small cause might be safely left in the hands of the first Judge, you would allow him to decide it summarily, and there would be an end of it. Sir Thomas Munro succeeded in establishing that sort of court in the villages; and the village Moonsiff has authority to decide a case up to the extent of 10 rupees (1 *l.*) in his own village, and he merely takes a note of what the complaint was, and what the answer was, and what the decision was: there is no other record.

avid Hill, Esq.

h March 1853.

2236 Can you state why it was that the whole of his recommendations not adopted?

I think the strong feeling of the public service was in favour of the system as it existed; they were extremely averse to a change. Knowing the obstacles he had to encounter, as he had been at home a number of years, I think he did not venture to bring forward what he liked; he would have been looked upon as too radical a reformer of such things, and he kept his suggestions within much more moderate limits. I have here a paper of his, which bears so strongly upon a point that has been urged just now, and I have such veneration for his authority—besides, his views are always so powerfully and so clearly expressed—that I feel how imperfectly another person can go over the same ground; and if the Committee please, I will read what he says in favour of civil servants being trained in the Revenue line.

2237. Will you have the goodness to read that paper?

The same is read, as follows:

EXTRACT, FORT ST. GEORGE PUBLIC CONSULTATIONS, 8th August 1820.

No. 3. MINUTE of the PRESIDENT.

THE Court of Directors has, in its letter of the 1st March 1820, proposed certain rules for our guidance in the selection of persons to fill the offices of Provincial and Zillah Judges, and of Secretaries to Government and the Board of Revenue, and of members of that Board, and of Register and members of the Sudder Adawlut; the Court has desired us to take this subject into our particular consideration, and to furnish it with our sentiments thereupon.

The reasons which render it desirable that the offices in question should, as far as may be practicable, be filled with men possessing a considerable share of Revenue experience acquired in the Provinces, are so fully explained in the Honourable Court's Letter to Bengal, of the 8th April 1819, that it is not easy to add anything to them; and it therefore appears to me, that all that remains for us to do is to endeavour, without delay, to carry into effect the intentions of the Honourable Court to as great an extent as may be found possible in the present state of the service. It is obvious, however, from the great want of regularly-trained Revenue servants, that we must proceed gradually, and that many years must elapse before full operation can be given to the plan. Until within the last 20 or 30 years, we had little territory in our own hands, and, consequently, hardly any means of forming Revenue servants. We have been more fortunate than could have been expected under such disadvantages, for most of the principal offices at the Presidency have generally been filled by a succession of able servants, and some of the most distinguished of them have been men who never were employed, or only for a very short time, anywhere else but at the seat of government. Such men, however, would undoubtedly have been much fitter for their stations if they had served some years in the Revenue line in the Provinces. We have now, in our widely-extended territory, an ample field for the training of the junior servants in Revenue affairs, and we ought to avail ourselves of it for that purpose. A knowledge of Revenue will be useful in whatever department they may be afterwards employed, but a knowledge of the Natives is still more essential; and this knowledge is only to be acquired by an early and free intercourse with them, for which the Revenue presents infinitely more facilities than any other line. It ought to be our aim to give to the younger servants the best opinion of the Natives, in order that they may be the better qualified to govern them hereafter: we can never be qualified to govern men against whom we are prejudiced; if we entertain a prejudice at all, it ought rather to be in their favour than against them. We ought to know their character, but especially the favourable side of it, for if we know only the unfavourable, it will beget contempt and harshness on the one part, and discontent on the other. The custom of appointing young men, as soon as they leave college, to be Registers to Zillah Courts, is calculated rather to produce than to obviate this evil. The most likely way of preventing it, and of fulfilling the desire of the Court of Directors to improve the efficiency of the civil service, would be to make every civil servant begin his career in the Revenue line. The slightest reflection may satisfy us that it is much more probable that he will become an useful public servant by beginning in the Revenue than in the Judicial department.

There are some men who overcome all difficulties, and become valuable public officers in whatever line they are placed, and whatever may have been that in which they were first employed; but in making rules we must look to men such as they generally are.

When a young man is transferred from college to the office of a Zillah Register, he finds himself all at once invested with judicial functions; he learns forms before he learns things; he becomes full of the respect due to the Court, but knows nothing of the people; he is placed too high above them to have any general intercourse with them; he has little opportunity of seeing them except in Court; he sees only the worst part of them, and under the worst shapes; he sees them as plaintiff and defendant exasperated against each other, or as criminals; and the unfavourable opinion with which he too often, at first, enters among

them,

them, in place of being removed by experience, is every day strengthened and increased. He acquires, it is true, habits of cautious examination, and of precision and regularity, but they are limited to a particular object, and are [illegible]quently attended with dilatoriness, too little regard for the value of time, and an inaptitu[illegible]or general affairs, which require a man to pass readily from one subject to another.

In the Revenue line he has an almost boundless field, from whence he may draw at pleasure his knowledge of the people. As he has it in his power, at some time or other, to show kindness to them all, in settling their differences; in occasional indulgence in their rents; in facilitating the performance of their ceremonies, and many other ways; and as he sees them without official form or restraint, they come to him freely, not only on the public, but often on their private concerns. His communications with them are not limited to one subject, but extend to everything connected with the welfare of the country; he sees them engaged in the pursuits of trade and agriculture, and promoting, by their labours, the increase of its resources, the object to which his own are directed; he sees that among them there is, as in other nations, a mixture of good and bad; that, though many are selfish, many likewise, especially among the agricultural class, are liberal and friendly to their poorer neighbours and tenants, and he gradually learns to take an interest in their welfare, which adheres to him in every future situation.

If a young man be sent at once from college to the Revenue line, the usual effect will be to render him attached to the natives; if to the Judicial, to increase the dislike towards them with which he too often sets out. The main object, therefore, in beginning with the Revenue is not to teach him to collect the kists, which is a very secondary consideration, but to afford him an opportunity of gaining a knowledge of the inhabitants, and their usages, which is indispensable to the due discharge of his duty in the Judicial as well as in the Revenue line.

An acquaintance with the customs of the inhabitants, but particularly of the royets, the various tenures under which they hold their lands, the agreements usual among them regarding cultivation, and between them and soucars respecting loans or advances for their rents, and the different modes of assignment, is essential to a Judge, for questions concerning these points form the chief part of his business. A Judge who is ignorant of them must often be at a loss on the most simple points; but as a knowledge of them can hardly be attained excepting in the Revenue, it may be said that no man can be a good Judge who has not served in it. If this kind of knowledge be indispensable in a Zillah Judge, it is equally so in the Judges of the higher Courts and the Secretaries to Government. It is on the right administration of the Revenue that the prosperity of the country chiefly depends. If it be too heavy, or very unequally distributed, the effects are felt in every department; trade is depressed as well as agriculture; numbers of the lower orders of the people are driven by their necessity to seek a subsistence in theft and robbery. The better sort become dissatisfied, and give no help in checking the disorder. The roads become unsafe, and the prisons crowded, and we impute to the depravity of the people the mischief which has probably been occasioned by injudicious taxation, or the hasty abolition or resumption of long-established rights and privileges. It is of importance that the higher officers of Government should always be able to trace the good or bad state of the country to its true cause, and that, with this view, they should in the early part of their service be employed in the Revenue line in the Provinces, because it is only there that they can completely see and understand its internal structure and administration.

As the business of a Judge is much facilitated by his having previously been trained in the Revenue line, so is that of a Collector by his having served in the Judicial; but not in the same degree, because he may become tolerably well acquainted with judicial proceedings in the practice of his own duties, in the settlement of boundary and other disputes respecting the occupation of land. In framing, therefore, the few rules for giving effect to the instructions of the Court of Directors, which I now submit to the Board, I have not thought it necessary to require that a Collector should previously have been employed in the Judicial line. It might, at first sight, seem to be desirable that a Collector should before have served as a Register, and that the civil servants, in rising in the Judicial and Revenue lines indiscriminately, and in passing from one to the other, should proceed regularly through every gradation in each; but this would be extremely embarrassing and injurious to the service, and would in fact be discovered on trial to be nearly impracticable. The conveniency of the service does not always enable us to make interchanges when servants are ready to be transferred from one branch to the other; but we can always secure a few years of Revenue instruction, by sending all servants to that line at first. We have then the advantage of the early and first impression, and two years is of more value then than double the number would be at any after-period. After serving two years as an Assistant Collector, he may either be transferred to the Judicial or any other line, or remain in the Revenue, and the matter might be determined, either by his own option or the exigency of the service. In rising afterwards to the highest offices, it will not be necessary that he should pass regularly through every subordinate one, or that he should serve longer in any of them than such a time as may enable him, with tolerable application, to acquire a practical knowledge of its duties. It may be thought that two years is too short a time for any person to learn much of Revenue, but as he may remain in that line as much longer as he pleases, though he cannot be less than two years, there can be little doubt but that a large portion of the junior servants will remain in it; that many of those who leave it on the expiration of the two years will have imbibed a partiality for it, and seek to return to it, and that we shall

David Hill, Esq.

10th March 1853.

thus always have a sufficient number of servants possessing such a knowledge of Revenue as to qualify them to fill efficiently any office whatever.

The rule of sending all young men directly from the college to the Provinces will in future prevent them from thinking of establishing themselves at the Presidency, and will prove beneficial both to them and the public; but as it might be attended with inconvenience to those who have been fixed here since 1816, were they to be removed, and more particularly as some of them owed their detention to their superior merits having fitted them to fill situations of greater emolument than they could have obtained in the Provinces, I would therefore recommend that, in order to prevent their suffering by the operation of a new arrangement; they should be permitted to have the option of remaining at the Presidency or going into the Provinces.

(signed) THOMAS MUNRO.

2238. Lord *Monteagle* of Brandon.] In that paper, does Sir Thomas Monro do more than express disapprobation of the system which had previously been practised, and of which all the authorities seem to have disapproved, of appointing a young man at once as Registrar in a Zillah Court; does he express any approbation of the plan of transferring him, when advanced in life, from the Revenue to the Judicial Department, or *vice versâ?*

No; I do not think it does bear upon that point; I have no doubt what his view would have been.

2239. Upon the whole, do you think that men of as good abilities in the Civil service are appointed to the Judicial service, as to the Political and to the Revenue?

Their qualifications, probably, may not be exactly the same; some individuals are more fond of a sedentary and some of a locomotive life, and some have a more active mind than others; but no doubt the Government would consider it necessary to have an officer upon whose energy and ability they could rely for a prominent political situation in the country: if they found a drone in the hive, they could not allow him to occupy an active situation, where the safety of the empire was at stake.

2240. But now that you have Natives filling high judicial offices, is it not a matter of the first importance that Europeans filling judicial offices should stand at least upon an equality with the Natives, if not superior to them?

My impression is, that the Natives ought to be very superior as judicial officers to Europeans; we have it in our power to educate Natives for the purpose up to any point; there is no objection to train them, in a certain degree, as lawyers; they might be instructed in the principles of jurisprudence, in which they are not now, and they might very much improve; I think, also, that when valuable Native officers distinguish themselves, they might be more prominently brought forward; there are a great many in all the Presidencies now, and we ought to look to improvement in the Judicial service more amongst the Natives than amongst Englishmen.

2241. Lord *Elphinstone*.] Do you think that the employment of Counsel in criminal cases would facilitate the duties of the Judges in the Sessions Courts, or would render them more difficult?

I should think it would render them more difficult.

2242. Earl of *Ellenborough*.] Which branch of the service, the Revenue or the Judicial, requires, in your opinion, the greatest natural ability?

They may not admit of an exact comparison; if I were to answer the question generally, I should say the Revenue; but there may be special adaptations for each particuliar service.

2243 Lord *Wharncliffe*.] Is it not one of the complaints against the Judicial system in India, that it has been very commonly the practice to appoint servants of the East India Company to offices in the Judicial Department, who are considered incompetent for other employments?

In the sense that the last question implied, it may be true that an officer who wanted energy and activity, personal and mental, might be removed from the Revenue or Political Department, without implying that he was proportionately disqualified for the Judicial; in that sense it may be true.

2244. Is not it a prevalent complaint among those who criticise the Judicial Establishment in India, that it is a common practice to appoint persons to the Judicial

David Hill, Esq.

10th March 1853.

Judicial Department who are considered incompetent for the other branches of the service?

I consider the assertion to be too strongly stated in the terms of the question; they are not incompetent; but I dare say it is true that a preference is given by Government to those departments in which talent is found necessary for the public interest; in that sense, it probably is true.

2245. Do you consider that to be no detriment to the Judicial Department?

I do not know that it is. Some clever men put into the Judicial Department would very often not do the business so well as inferior men; they would be chalking out extraneous or fanciful work for themselves. They would be exercising their talent, not in getting through their file and performing their regular task, but in other ways. Very often you would get better men, and get less work from them.

2246. Should you say that the persons who fill the higher offices in the Judicial Department are as fully competent to discharge their duties as the persons who fill the higher offices in the other departments of the Indian service?

It would not be easy to make a general comparison; but anybody who knows the service can say that they are generally competent. There are very eminent men in the Judicial Department: and nobody could say with truth that none but rejected candidates were to be found there.

2247. Earl of *Ellenborough*.] There has been no question of the propriety of the appointments of late years to the Sudder Court in Bengal?

I think not; they are all able men. The Government take great pains in looking out for able men. Of course they fail sometimes in India as they do here.

2248. Lord *Wharncliffe*.] Your opinion is that the complaint has been exaggerated?

It has been exaggerated, certainly; but I should not say that it is altogether without foundation.

2249. Lord *Elphinston*.] Do not they sometimes go backwards and forwards, going first from the Revenue Department to the Judicial, and then back again as Commissioners of Revenue?

Yes, they do; the intermediate office of Commissioner affords some facility and advantage in that respect.

2250. Lord *Wharncliffe*.] Taking the Presidency of Bengal, and comparing the Company's servants who are employed there as Collectors with those who are employed in the higher offices of the Judicial Department, should you say that they were of an equal amount of ability in those two branches?

I have not the means of giving an answer that I could rely upon; I have not sufficient personal knowledge of the parties, but I am sure there are able men in both departments. The probability is, that the ablest are in the employments in which the Government interest is most at stake.

2251. Earl of *Ellenborough*.] Do you not apprehend that, in the first instance, the destination of young gentlemen to one or other of those two departments, the Revenue or the Judicial, is very much determined by the accident of a vacancy occurring in the one or the other?

In their first training at the Presidencies, the rule is that they shall always go in some measure into the Revenue line under a Collector or Magistrate. After that, I dare say the question is correct. The next step, when a young servant is fairly embarked in the service, may be accidental. He is looking out for preferment, and he takes it where he can find it.

2252. Lord *Monteagle* of Brandon.] In the Special Report of the Law Commissioners, they state, "At present there is not a single situation in the civil branch of the Judicial Department in Bengal open to a covenanted servant before his elevation to the important office of Zillah Judge; nor in Bombay do the Zillah and Assistant Judges exercise any original jurisdiction before they are invested with appellate jurisdiction;" do you consider that that is a defensible or a prudent system?

I should say that they are always in judicial training, if they are employed in public business. They are not learning the technicalities of any particular system of law; but a public officer, particularly in India, who from the time he rises till

David Hill, Esq.

10th March 1853.

he goes to bed is dealing with the actual transactions of life as they occur among mankind, is always engaged in what is essentially judicial investigations, though not legal technicality.

2253. Was there any minute made, or any proceeding taken at the India House, upon the receipt of the Report of 1842, on the training of the junior civil servants, for the judicial functions especially, by the Law Commission in India?

My impression is, that at that time it was looked upon unfavourably by the head of the Government.

2254. Lord *Wharncliffe*.] You said, in an earlier part of your evidence, that it is one of the principal faults of the decisions of the Indian Courts, that they are apt to turn too much upon technical points, and not upon the merits of the cases brought before them?

I think they are too diffuse; that they put too much upon record. The impression upon my mind was that the chief difficulty in India arises from distrust of the Judge in original suits. Preparation is always made from the first for an appeal. For that purpose all the evidence is recorded, and all the documents produced upon the trial are preserved. The whole of this record goes to the Appellate Court in the pettiest case as well as in a great one, and creates great delay and expense. I remarked also that the Sudder Judges are apt to reverse the decisions of their fellow-servants, upon grounds of informality. This brings to my recollection another point, which leads to the same observation, namely, that very often, from distrust of the veracity of the witnesses, the Judge is apt to decide upon a technical point rather than upon the merits of the case.

2255. Earl of *Ellenborough*.] May it not arise sometimes from a distrust of his own power to decide upon the question at issue, for which reason he may prefer to decide the case upon a technical point rather than upon the merits?

I think a Judge is rather led to do that from distrusting the truth of the evidence before him, knowing that there is false swearing, as there must be, where there is so much contradiction: he is very ready to decide the case upon a technical point upon which he has no doubt, rather than upon the merits upon which he cannot make up his mind. The Sudder Court Judges, with the view, as it seems to me, of showing their superior skill, are sometimes inclined to put the Judges below in the wrong, for having overlooked some rule of law or practice.

2256. Lord *Wharncliffe*.] You have lately been stating that in a simple state of society like that in India, the office of Judge, in determining disputes between parties, is rather that of an individual exercising his good sense than of a professional mind employed upon the nice distinctions of law to which you alluded; that appears to be inconsistent with what you stated previously about the decisions turning so much upon technical points, unless you intended that to apply simply to Courts of Appeal?

Yes, to the Sudder Court. Perhaps I may be allowed to mention that, in instructions about to be sent to India, the point now adverted to has been very forcibly pressed upon the notice of the Government, to the effect that, in an appeal case more especially, the decision ought always to turn upon the merits; that, if the Appellate Court is satisfied that the original decision is substantially right, however defective the proceedings may have been, in point of form, they ought in that case to pass two orders, one affirming the decree as between the parties, and the other censuring the Judge for having committed a breach of the rules. It has been strongly urged upon the Government that, if necessary, the Legislature should interpose to give effect to that view, so that a decision shall not be reversed because it is informal or technically illegal; and that the Appellate Court, after great expense has been incurred, and investigation has probably thrown as much light on the facts as could be obtained by a second trial, shall not send back the case to be tried again, but decide between the parties upon the substantial evidence.

2257. When did those instructions go out?

They were prepared within the last few weeks, but, I believe, have not yet been actually sent out.

2258 *Chairman*.]

2258. *Chairman.*] Will you be so good as to furnish the Committee with a copy of those instructions?
I will do so.—[*Vide* Appendix A.]

2259. Lord *Ashburton.*] Is not the appeal decided solely upon a view of the record?
Upon the appeal in the first instance, as matter of right: the Appellate Court might call for new evidence if they found that the evidence was not complete.

2260. Do they re-hear the case?
Never; they only go upon the written record, sent, perhaps, from an immense distance; that is upon the appeal of right, where the party is entitled to demand it. The second appeal, the special appeal, turns upon a question of law: it is there alleged that the Court have overlooked some rule of proceeding, or some point of law, and the evidence may have nothing to do with the question.

2261. Has the Court of Appeal any means of judging of the credibility or the character of a witness, as it may be known in the locality in which he resides?
Certainly not; that is a great difficulty.

2262. Earl of *Ellenborough.*] From the manner in which the evidence is taken, can the Judge himself, in the Court of Original Jurisdiction, tell what the character of the witness is?
Very often not, in Bengal especially.

2263. Lord *Elphinstone.*] Is the first European Judge, the Zillah Judge, able to judge of the credibility of a witness as well as the Sudder Amin, or the Moonsiff?
Cæteris paribus, he certainly is not; if the Native is as good a Judge, he has advantages that cannot belong to the other.

The Witness is directed to withdraw.

FREDERIC MILLETT, Esquire, is called in, and examined as follows:

Frederic Millett, Esq.

2264. *Chairman.*] YOU have already given the Committee some valuable information with regard to the system of judicature in India; will you be so good as to state to the Committee the system of training young men who subsequently go into the judicial service in India?
Formerly covenanted officers held the office of Register, which was a Court of Primary Jurisdiction. That was abolished in 1831 or 1832, and since that time there has been no training for the department of Civil Justice.

2265. There is some amount of legal education given at Haileybury?
There is.

2266. Is that of a nature which is of much use to a young man afterwards when he enters upon the duties of a Judge?
It enables him to follow up, if he wishes to do so, the study of law.

2267. What is your opinion of the present system of first giving him an apprenticeship, before he becomes a Judge, in the office of the Collector of Taxes?
I approve of it, as bringing him into contact with the people, and giving him an opportunity of becoming acquainted with their language, manners, habits and institutions. But, after a certain number of years' experience, he should be allowed to take his choice, either to continue in that line or to go into the judicial line; because this local knowledge, however useful, does not supersede the study of law. To form a good Judge, local and practical experience should be combined with a familiarity with the principles and rules of jurisprudence.

2268. Are appointments made now to the two branches of the service very much at haphazard?
All previous employment having been in the Revenue and Magistrate's lines,

Frederic Millett, Esq.

10th March 1853.

I do not know by what criterion the appointments to the Zillah Judgeships are made.

2269. Would you propose to have any test of his qualifications in case of his proposing to go into the judicial branch?

Yes; I should like him to pass through an examination in the civil regulations, in the principles of law and equity, which have regulated the decisions of the Indian Courts, as ascertainable from the printed Reports of the Sudder Courts, and in the most useful portions of the Hindoo and Mahomedan laws, which have been rendered accessible by translations and treatises.

2270. Would he have the means of informing himself on legal matters during his apprenticeship to the Collector of Taxes?

He would have the means, during his leisure hours, of prosecuting such studies if such were the bent of his mind.

2271. You are of opinion that it would be right to continue the system of keeping him for two years at Haileybury; and then, on his going to India, putting him, as at present, under the Collector of Taxes or a Magistrate, and that then, at the end of a certain period, he should select to which branch of the service he will belong, and that then some test of examination should be applied as to his capability for entering that branch of the service?

Yes.

2272. Lord *Broughton.*] There is nothing of that sort now?

Nothing.

2273. Lord *Wharncliffe.*] At the present time, young men going out under those circumstances remain for a considerable period at the Presidency for the purpose of their obtaining a knowledge of the Native language?

In Bengal they do.

2274. Do you think that a desirable system?

I do not.

2275. Would it be desirable to send them at once, upon their arrival in India, up the country?

Yes; to study under the superintendence of experienced officers; and they might perhaps be employed, at the same time, in minor ministerial duties.

2276. Would you abolish the system of keeping them at the Presidency?

I would.

2277. Earl of *Ellenborough.*] Would it not be of advantage to take them at once out of Calcutta?

I think it would; they are there exposed to much temptation, to idleness and expense.

2278. Do not they often get into debt, which embarrasses them for a long time afterwards?

They do.

2279. Lord *Wharncliffe.*] Is it the fact that they do not acquire much during the period that they remain at the Presidency?

I think it is.

2280. Lord *Ashburton.*] Have you ever heard anybody speak in favour of this system?

Not lately.

2281. Do you know why the change, which you think so desirable, is not made?

No.

2282. *Chairman.*] What do you think is the amount of education, with reference to Oriental languages, at Haileybury, which is desirable?

I think that when they are at Haileybury, their attention should principally be confined to the acquisition of that knowledge which is best attainable in this country, that is to say, history, political economy and law; and I would give them only such an elementary knowledge of the vernacular languages of India as would facilitate their future progress.

2283. You

Frederic Millett, Esq.

10th March 1853.

2283. You think that further progress in those languages is more easily attainable when they arrive in India?
Much more so.

2284. Do you think that, upon the whole, it is a good system to educate young men intended for Indian service at Haileybury; or would it be more desirable to educate them mixed up with other young men not intended for that employment?
I think it would.

2285. Lord *Monteagle* of Brandon.] Were you acquainted in India with any of the writers sent out under Mr. Wynne's system from Haileybury?
Yes; Sir Henry Elliot was one, and I think Mr. H. Torrens was another.

2286. How did they succeed?
They were both distinguished civil servants, and eminent Oriental scholars.

2287. Were you acquainted with the mode in which the appointments took place under the Act of 1833, and before the Act of 1837, when four candidates were presented, out of whom one was taken?
I was not in this country at that time.

2288. You have no means of comparing that system with the system of appointing to every vacancy?
No.

2289. You were one of the Law Commissioners in India who considered the whole question of legal reform?
Yes.

2290. You and your distinguished colleagues presented a Special Report upon this subject, which is before the Committee; do you see any reasons to depart from the general tenor of your recommendations upon that subject?
No. I think, in the evidence which I gave here before, I recommended that the junior civil servants should be employed two or three years under a Collector or Magistrate, before they were separated for the Judicial branch; I think, perhaps, that period is a little too short.

2291. You continue to disapprove of a system that would confide Judicial power, upon appeal, to persons who have not had experience in the administration of justice in the first instance?
Decidedly.

2292. Is it too strong an expression of Mr. Courtenay Smith, that it resembles the instruction of surgeons in their art, by dissecting living bodies?
I would not go quite so far as that.

2293. Earl *Powis.*] In what manner would you give those Judges original jurisdiction?
They might exercise the jurisdiction of a Moonsiff in the first place, then of a Sudder Amin.

2294. *Chairman.*] Is there no objection to their entering so young upon those duties?
According to the age young men now usually go to India, they would be 25 or 26 when they undertook these duties.

2295. Lord *Elphinstone.*] In Bengal, where the permanent settlement exists, would not he learn much less under the Collector than he would in the Upper Provinces?
The settlements are now completed in the North-western Provinces for terms of 20 or 30 years; and I understand that the business of Collectors in Bengal in the management of estates, the property of Government, and under the superintendence of the Court of Wards, has much increased of late years.

2296. Has he any magisterial duties now in Bengal?
No.

2297. *Chairman.*] At what age can a man become a Zillah Judge?
I think generally after 20 years' service in India.

2298. Earl of *Ellenborough.*] Not before?
I think not; it used formerly to be 14 or 15 years.

2299. Lord

Frederic Millett, Esq.

10th March 1853.

2299. Lord *Wharncliffe.*] Then a man could not ordinarily become a Zillah Judge under 40 years of age?

No.

2300. Lord *Colchester.*] What is the greatest amount of value of property which comes under the jurisdiction of the Zillah Court?

The jurisdiction is to any amount.

2301. Lord *Wynford.*] What is the average number of causes that are brought before the Zillah Court?

The Zillah Judges try very few original suits now. Their business is to be Appellate Judges, and to superintend all the Native subordinate Judges, whose jurisdictions are thus arranged: the Moonsiff tries causes to 300 rupees; the Sudder Amin to 1,000 rupees; the Principal Sudder Amin to any amount.

2302. Lord *Ellenborough.*] But questions of great difficulty as to both law and fact may occur in cases where the amount at stake is only 5 *s.* as well as where it is 50 *l.*?

They may, no doubt. The limitation can hardly be justified in principle, but it is convenient.

2303. *Chairman.*] What is your opinion of the moral and intellectual aptitude of the Natives for judicial offices?

I think they are very well adapted for it; they make very good Judges.

2304. Are the Native Judges improving in reputation, and in the consideration in which they are held?

I think they are; but I consider the salary of the lower Native Judge, the Moonsiff, much too small for his responsibility; I should certainly wish to see it increased.

2305. What is the lowest salary?

The lowest salary is 100 rupees a month; they may rise to a higher degree, which is 150, by merit.

2306. Earl of *Ellenborough.*] But the Principal Sudder Amin gets about 700?

The first grade is 400, and the second is 600.

2307. *Chairman.*] Do you think that, considering the improved character which they now hold, it is necessary to have so many appeals, as a check upon them, as now exist?

In civil suits there is only one appeal upon the whole case; I do not see how you can get rid of that. There is a second or special appeal upon points of law, but that goes up to the Sudder Court.

2308. Lord *Elphinstone.*] In fact, there is only one intermediate Court between the original Court and the Sudder; the Provincial Court is done away with?

Yes; the Zillah Court holds the place which the Provincial Court used to do.

2309. *Chairman.*] One important point which has been stated to the Committee is with regard to the non-liability of British-born subjects to the criminal jurisdiction of the Provincial Courts; is that an anomaly which, in your opinion, ought to be changed?

I think so, certainly. Foreigners of all kinds, Germans, Italians, French, &c., are subject in the same way as the Natives are. If British subjects were subjected to our Courts, I think there would be no injustice done them.

2310. Lord *Elphinstone.*] Prisoners are now allowed counsel?

They are.

2311. Do you think that is an improvement?

I rather doubt that.

2312. Do not you think that there are already too many chances in favour of the prisoner without giving him counsel?

I think there are quite enough.

2313. Lord *Monteagle* of Brandon.] A previous witness has described the state of things in the interior as being Mahomedan law for the Mahomedan, Hindoo law for the Hindoo, and no law at all for the European; is that a just description of the case?

Rather,

Frederic Millett, *Esq.*

10th March 185

Rather, the Courts endeavour to administer to all their own laws: to the Englishman English law; to the Frenchman the French law; to the Portuguese the Portuguese law, and so on.

2314. Earl *Powis.*] To what criminal law are the covenanted servants amenable?

To the English law; they can only be tried by the Supreme Court.

2315. Earl of *Ellenborough.*] Would it not be rather difficult to try a Company's servant at Delhi or Loodianah in the Supreme Court, and to bring up the witnesses from that distance?

Very inconvenient, and very expensive.

2316. *Chairman.*] It has been stated in evidence by the preceding witness that that subject, of the liability of British-born subjects to criminal jurisdiction in the Provincial Courts, has been suspended, with the view of obtaining the adoption of the Macaulay code, either in its original state or as amended: you were engaged in the preparation of that code?

I was.

2317. Would there be any difficulty in carrying on a similar work with regard to Civil Procedure in India?

It would be difficult, but I think not impracticable: in the civil code you must leave to the natives their own laws of succession, marriages, and so on.

2318. Lord *Monteagle* of Brandon.] You were a party to the preparation of what is called the Lex Loci, were not you?

Yes.

2319. Was it not a fact that that did not fail from any delay on the part of the Commission, but that it failed from other causes?

Yes. I should observe, too, that when we proposed the Lex Loci, the Judges of the Queen's Court most readily proffered their assistance for the formation of a civil code.

2320. Those were Sir Henry Seton and Sir Lawrence Peel?

Yes.

2321. *Chairman.*] What is your opinion as to the best way in which the legislation of India can be carried on; whether by the present system, or by the Law Commission, or by any other process?

I think the Legislative Council ought to be enlarged; it now consists merely of the Executive Council and one additional member; I would enlarge it; I would introduce into it one of the Judges of the Supreme Court, one of the Judges of the Sudder Court, a member of the Revenue Board, the Secretaries of the Legislative Council and of Bengal; and, if there were not any members from Madras or Bombay in the Executive Council, I would have one from each of those Presidencies, and the Law Commission I would incorporate with it.

2322. Would you have its proceedings conducted orally, or by written minute?

Orally.

2323. Earl *Powis.*] Would you have them to sit permanently, or during certain seasons of the year?

Permanently.

2324. Lord *Elphinstone.*] You said you would have members from Madras and Bombay; if they were simply members of the Legislative Council, would they not have little or nothing to do?

They would have less to do than others, perhaps; but I think there ought to be some members from those Presidencies to share in forming the laws.

2325. Would it not be a simpler way to refer the proposed laws to the Governor in Council of each of those Presidencies for their report and opinion?

I do not think business could be so satisfactorily conducted in that way.

2326. Earl of *Ellenborough.*] You would lose the advantage of oral discussion?

Yes.

2327. Lord *Wharncliffe.*] You would not have that oral discussion public?

Frederic Millett, Esq.

10th March 1853.

I should see no objection to its being public, but I do not propose that it should be so.

2328. *Chairman.*] Would you associate any of the Natives with such a body?
I do not think the Natives are public-spirited enough for it. The educated Natives at Calcutta have not much sympathy with the general population of the country.

2329. Earl of *Ellenborough.*] They are not a fit representation of the Native character?
Not at all.

2330. *Chairman.*] Have you ever heard any complaint of the Government interfering with Judges in respect of disputes between the Collectors of Taxes and the Natives?
I do not recollect any.

2331. Are Natives allowed to practise at the bar before the Supreme Court?
I never heard of any so practising.

2332. Do sufficient means of legal education for the Natives now exist in India?
Those who understand English of course may have access to any book of English law; those who do not have not the same advantage.

2333. Do you think it would be desirable to institute anything like a College or Educational Institution as regards the law?
I think it would.

2334. Earl of *Ellenborough.*] If you enlarged the legislative body, do not you think that it would be advisable still to give to the Governor-general in Council, with the Council as now constituted, the power of intervening in cases of extreme emergency, with an Act which might be of immediate necessity?
I think it would.

2335. *Chairman.*] Do you see any objection to the existing system by which a Magistrate, at the head of the Police, also exercises a criminal jurisdiction?
I think it is desirable, as far as possible, to separate the Police and Judicial functions; but it would probably be very inconvenient to carry it to its full extent.

2336. Do you think there would be any advantage in the Magistrates being required to commit their decisions to writing, as the Judges do?
I think it would be a great advantage.

2337. Lord *Wharncliffe.*] Would they have time to do that; would it be practically possible?
They are sometimes very much hurried, there is no doubt of that; but it would conduce to the good administration of justice.

2338. Earl of *Ellenborough.*] Have not the members of Council, as it is now constituted, too much to do with the administrative business to attend very greatly to the legislative business?
The legislative business is very heavy, and amidst other business I think there is scarcely enough discussion of any new law.

2339. It is not that part of the business of the Governor-general in Council which they conduct in the most satisfactory manner to themselves?
I do not think it is.

2340 Lord *Elphinstone.*] If you had a Legislative Council, do you think there would be any danger of over-legislation from the Council having nothing else to do?
No; because those that I propose to be members of it would have their own business to perform, as the Judges of the Queen's Court and Sudder; the members of the Board of Revenue, &c. I propose that they should perform this duty gratuitously.

2341. All, except the two members for Madras and Bombay?
Yes; but I have not only current legislation in view, but much codification.

2342. *Chairman.*] Are there any other suggestions which you could make on this branch of the inquiry, which you think might be useful with reference to possible improvements in the system of administering justice in India?

I should like to simplify our system of Civil Procedure. The original regulations on this subject were based upon the practice of the English Courts: a less artificial and expensive system would, I think, better suit the Natives of India. I see it stated that in one of the districts of the Punjab, 34 per cent. of the suits are decided at once by confronting and examining the parties.

2343. Earl of *Ellenborough.*] Are you aware that the code for the Punjaub was made in about four weeks?

I was not aware of it.

2344. Earl *Powis.*] With reference to a previous answer which you gave as to the comparative advantages of educating civil servants of the Company at Haileybury or elsewhere, is your opinion in favour of the maintenance or the abolition of Haileybury?

If I could be satisfied that the universities afford equal opportunities of instruction, I should see no reason for maintaining Haileybury.

2345. Lord *Monteagle* of Brandon.] Have you ever compared the Cambridge Papers upon Law with the Haileybury Papers upon Law?

No, I never have.

2346. But you passed through Haileybury yourself?

I did.

2347. Were you there in Sir James Mackintosh's time, or subsequently?

I was there in Mr. Christian's time.

2348. Lord *Wharncliffe.*] Do you think that much professional legal knowledge is necessary for the ordinary functions of a Judge in India?

Not for the usual run of cases.

2349. You think that a man is competent to discharge the duties of a Judge in the lower grades of the department by means of common discretion and good sense, without much professional education?

I would not in the least recommend a technical education, but an education in the general maxims and principles of equity.

2350. You would not think it desirable to have a separate service prepared by legal education here?

By no means. I have with me some statements of the costs of suits, both in Bengal and in the North-western Provinces, furnished to me, at my request, by Mr. Thomason and Mr. B. Colvin, the Register of the Sudder Court at Calcutta. They were compiled from suits taken at random, and exhibit the actual costs of suits for personal and real property, both in the first instance and on appeal. If it is the pleasure of the Committee, I will hand them in.

[*The same are delivered in.—Vide* Appendix B.]

2351. Earl of *Ellenborough.*] Where are the suits the cheapest?

In the North-western Provinces.

2352. Is there much difference?

If I remember right, there is.

2353. Lord *Glenelg.*] Under what code is the Punjaub Judicial system carried on?

I do not know who framed it. It was promulgated under the authority of the Governor-general. I have not seen it.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday next, Two o'clock.

Die Martis, 15° *Martii* 1853.

LORDS PRESENT:

The Lord President.
The Lord Privy Seal.
Marquess of Tweeddale.
Marquess of Salisbury.
Earl of Albemarle.
Earl of Harrowby.
Earl of Ellenborough.
Viscount Hardinge.
Viscount Gough.
Lord Elphinstone.
Lord Colville of Culross.
Lord Colchester.
Lord Somerhill.
Lord Wharncliffe.
Lord Wynford.
Lord Ashburton.
Lord Monteagle of Brandon.
Lord Broughton.

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

Right Hon. Sir Edward Ryan.

15th March 1853.

The Right Honourable SIR EDWARD RYAN examined.

2354. *Chairman.*] WILL you be good enough to state to the Committee what office you held in India?

I was sworn in as Puisne Judge in May 1827, and as Chief Justice in December 1833, and I resigned in January 1842; I was nearly 15 years in India.

2355. What is your opinion of the amount of improvement in the administration of the law which has taken place during the last 20 years in India?

Some improvement has taken place in the law; but certainly not such improvements as were contemplated, nor such as it was expected the Law Commissioners would have carried out.

2356. Did the Judges of the Supreme Court at any time offer any suggestions for the improvement of the administration of justice in India?

In 1829, when Lord William Bentinck was Governor-general, in consequence of some cases of conflicting jurisdiction between the Supreme Court and the Company's Courts, and other matters which then occurred, Sir Charles Metcalfe, then being a member of Council, recorded a minute in the Secret Department, complaining of the jurisdiction which the Supreme Court exercised, and offering various suggestions to remedy the evils of which he complained. That minute was communicated by the then Governor-general to the Judges of the Supreme Court. A great deal of correspondence took place; and the result was, that certain suggestions were offered for the improvement of the Supreme Court; in fact, for the amalgamation of the Supreme and the Sudder Court for the formation of a code of laws, and for the establishment of a Legislative Council. Those suggestions were transmitted home previous to the renewal of the Charter Act in 1833, and they are printed in the Appendix to the Reports at that period. I believe that they led to the clauses which were inserted in the Act of 1833, providing for the establishment of a Law Commission for the purpose of inquiring into those subjects; and they also probably led to the appointment of a legal member of the Legislative Council; and they may have afforded suggestions for the enlargement of the powers of the Council. The powers of legislation in India at that time were, as to British subjects, extremely limited; they were enlarged very much by that Act; and power was given to legislate in matters relating to the Supreme Court as well as to the Courts of the Company; in short, very enlarged powers were given.

Right Hon.
Sir Edward Ryan.
——
15th March 1853.

2357. Were you acquainted with the proceedings of the Law Commission?

The Law Commission was appointed under that Act of Parliament. The intention, as pointed out by the Act of Parliament, was that the Commissioners should fully inquire into the existing judicial establishments of the country, and having made general and local inquiries, and investigated fully the jurisdiction, forms and procedure of the Queen's and the Company's Courts, the Act points out that they should report upon those matters, and suggest such alterations as they thought expedient for the improvement of the administration of justice. There is another clause in that Act which suggests that they should only visit such places and make such inquiries as the Governor-general in Council shall think fit. The Commission did not make inquiries by inspecting and visiting the various Courts in the interior, nor did they make those reports upon the existing administration of justice to which the Act seems to point. The Government for the time being, I believe, did not wish inquiry to be made by means of personal inspection, and they commenced their labours with the formation of a criminal code. The Commission was established in 1835, and the criminal code was completed within two years, in 1837. That criminal code was perhaps urgently called for, owing to the particular position in which British subjects were then placed in the interior. For the first time they were allowed to settle in the interior, and it was thought necessary, as they were allowed so to settle, to provide a criminal code which might be administered to them by the Courts of the Company, they being only subject in criminal matters, at that time, to the jurisdiction of the Supreme Court; therefore there was some urgency perhaps in taking up, in the first instance, the criminal code, and making a law which might be applicable to British subjects settling in the Mofussil, to whom this law might be administered in the Courts of the East India Company.

2358. That criminal code was finished by them in 1837?

That criminal code was finished in 1837 upon its being finished, the then Governor-general thought it desirable that it should be submitted for consideration to the different legal authorities both in India and in England: that occupied a period of 10 years. In 1847 the next step was taken with reference to that criminal code. The observations made on the code by the Queen's and Company's Judges were then reviewed by two of the remaining members of the Law Commission, Mr. Elliot and Mr. Cameron They made elaborate reports upon those observations on the criminal code. The matter then slept again till 1850; and in 1850 the Government in India proposed to pass an Act subjecting British subjects to the jurisdiction of the Company's Courts: in the Mofussil that Act was published, but it was not passed, owing to the attention of the Governor-general at that time being called to the state of the criminal law as applicable to British subjects in the Mofussil, and finding that they would be subject to the Mahomedan law, altered and modified by the regulations of the East India Company. The Governor-general thought that that was not a fitting law to administer to British subjects, and the consequence was, that that Act was not carried out, but a reconsideration of this criminal code was commenced by the authorities then in India: that occupied some time. The code so altered by Mr. Bethune, who was then legislative member of Council, and the original code, were transmitted to the authorities here. The authorities here did not deal with either of the codes, but they were transmitted again to India, to be dealt with there.

2359. The alterations by Mr. Bethune were of a very important nature, were not they?

It was a new code in principle; Mr. Bethune altered the definitions, and omitted the illustrations and other parts of the former code, and it was, in substance, a new code. It was in February 1852 that it was transmitted back again to India. What has been done since I am not informed.

2360. Lord *Monteagle* of Brandon.] I collect from your previous answer, that Mr. Macaulay's code was subjected to the revision of Mr. Cameron and Mr. Elliot, who made elaborate reports upon it?

It was not a revision: they were called on to make reports upon the suggestions and observations which had been made by the Judges of the various Courts in India, both the Supreme Court and the Company's Courts. They reviewed those suggestions, and proposed alterations, but they did not revise or alter the original code.

2361. Subject

Right Hon. Sir Edward Ryan.

15th March 1853.

2361. Subject to those suggested alterations to which you have adverted, was the opinion of those eminent authorities, Mr. Cameron and Mr. Elliot, favourable to the code which was then before them?
Certainly.

2362. And favourable to a code in general terms?
Certainly.

2363. Did they apprehend, at any time, that there would be any serious obstacle to the establishment of that code from any difficulty in translating it, and making it known?
No, nor do I think there would.

2364. Earl of *Ellenborough.*] Do you understand Hindostanee?
No.

2365. Then, how do you give that opinion?
I give it from what I have collected of the opinions of others who are familiar with the language; Mr. Millett, for instance, and others who have attempted translations of that code.

2366. *Chairman.*] Mr. Millett actually translated a portion of that code?
He did.

2367. With respect to Europeans not being subject to the Company's Courts, you consider there should be an alteration?
Yes.

2368. Would there be any difficulty, supposing the criminal code enacted, or the present law administered, in providing juries for the trial of Europeans in criminal cases?
I think there would in the Mofussil.

2369. Earl of *Ellenborough.*] From what you know of the Company's Judges in the Mofussil, should you like to be tried before them?
Before some of them I should have no objection to be tried.

2370. Do you think generally it would be agreeable or safe for Europeans to be tried before the Judges in the Mofussil in Bengal?
I think so.

2371. From their knowledge of the law and the rules of evidence?
Their knowledge of English law and English rules of evidence may not be extensive, but the code would supply all that would be requisite as to substantive law.

2372. Do they understand the rules of evidence?
They do not understand all the nice distinctions of evidence prevailing here. A great many of those rules of evidence, I am glad to say, are abolished here, and are in course of being abolished.

2373. Lord *Monteagle* of Brandon.] In the last few years, have not many technical rules of evidence, upon which legal distinctions have been drawn, been abolished by statute?
A good many have.

2374. Lord *Elphinstone.*] Soldiers are tried in India, in criminal cases, in the Mofussil, by Courts-martial, are they not?
Yes.

2375. Do you suppose that the officers are perfectly acquainted with the rules of evidence?
No; they have occasionally the legal assistance of the Judge Advocate. I do not suppose they know the nice distinctions of the English law of Evidence.

2376. The Judge Advocate himself, in India, is an officer, is not he?
He is.

2377. Do you suppose the Judge Advocate is better acquainted with the rules of evidence than the Company's Judges in the Mofussil?
Certainly not.

2378. Earl of *Ellenborough.*] Were you ever present at a Court-martial?
No.

Right Hon. Sir Edward Ryan.

15th March 1853.

2379. Were you ever present at a trial before a Company's Judge?

No.

2380. Do you think you are perfectly competent to give an opinion upon the subject?

I cannot be so competent as if I had been present. The men most competent to give such an opinion are the persons who have had to conduct those trials. With the Judge Advocate I have had communications upon various legal matters. He has referred to me upon such matters on several occasions, and occasionally on questions of evidence, and I have had frequent communications with the Company's Judges.

2381. *Chairman.*] Do you think it desirable that a code should be drawn up with regard to civil procedure?

The criminal code would not be complete without a code of criminal procedure to carry it out. A code of criminal procedure was prepared by the Criminal Law Commissioners. It was prepared with forms of indictment, and the whole of the procedure necessary for administering the criminal code. It was transmitted to the authorities at home, and upon that no opinion has been expressed, that I am aware of, either by the Government of India or the authorities at home. I think it would be desirable to frame a civil code. The Committee are aware that the law in the Mofussil is personal, and not local: there is a law for British subjects, which is the English law; there is a law for Hindoos, which is the Hindoo law; and for Mahomedans, which is the Mahomedan law. For all other persons, so far as the civil law is concerned, there is, in truth, no subsisting law.

2382. Earl of *Harrowby.*] Is it the law of the plaintiff or the defendant?

The law of the defendant.

2383. Lord *Elphinstone.*] There is no law for the Armenians in the Mofussil, is there?

There is not, which is a grievance they have long complained of. This grievance as to there being no law for foreigners or Armenians, or Native Christians or East Indians, was a subject of complaint in 1829, and previous to that time. Lord William Bentinck endeavoured to remedy it: he proposed a regulation which he submitted to me, and I considered it, and found there were not sufficient legislative powers then in the Government to carry out the regulation which was to remedy those evils When increased legislative powers were given by the last Act, it was presumed that this among other evils would be remedied. It was submitted to the Law Commission to consider; they made a very elaborate report upon the subject; they entered into the whole question, reviewing both the past and the existing state of things. Having made their report, which I think was in 1840, it was considered by the authorities there; and in 1845 the subject was again resumed, and all the Judges of the Courts in India, with the exception of one Judge of one of the Sudder Courts, and all the members of the Council at the Presidency of Bengal, with the Governor-general, except one member of Council, thought it desirable that the Act which the Commissioners had proposed should be passed. It was transmitted to the authorities at home, and from that time to the present, I am not aware that any step has been taken upon the subject.

2384. Lord *Monteagle* of Brandon.] You stated that the inconveniences attending the state of the law in the Mofussil affected the Armenians as well as others of the population; are you aware of that being felt as a practical grievance by them?

Certainly; they are owners of large zemindaries in the Mofussil. Questions of inheritance and succession to property must arise in reference to that class of persons. They are dealt with by a reference to the customs of the people as they are supposed to have existed in former days, and by a reference to their priests, who advise upon those customs, but there is no established law.

2385. Are not you aware that the Armenians claim under a supposed contract entered into between their ancestors and those who then represented the East India Company?

Yes, they do; that has been part of the subject of their complaint; they made an application to Lord Auckland, in 1836, upon the subject; they laid their grievances before him; he then said that they should be considered; but the step which

Right Hon.
Sir Edward Ryan.

15th March 1853.

which was taken for this purpose was by referring the question to the Law Commission, which made its report in the manner I have mentioned.

2386. Which has not been acted on?
No; the Armenians are, at this moment, petitioning upon this very subject.

2387. Earl of *Harrowby.*] Are they a numerous body?
Not a very numerous body: they are an exceedingly respectable body in Calcutta; they are a remarkably well-conducted people, and have lands and property both in Calcutta and in the Mofussil. Of course in Calcutta they have not this grievance to complain of.

2388. *Lord President.*] Are they extensively distributed in the Mofussil?
Their lands are, but not themselves.

2389. Earl of *Harrowby.*] Questions affecting property lying in the Mofussil would not be decided by the law of Calcutta, though the proprietors were resident in Calcutta?
No, not for that class of persons.

2390. Earl of *Ellenborough.*] When you went to India as a Judge of the Supreme Court, you had to administer the Hindoo law to Hindoos?
Yes.

2391. What means had you of acquiring a knowledge of the Hindoo law?
The knowledge of the Hindoo law which I acquired was, of course, through the medium of translations of treatises prepared by civil servants of the Company; translations of various books on Indian law, which are in fact the guides, and the only safe guides, which the civil servants have themselves.

2392. Are they voluminous?
There are many volumes.

2393. Did you find them sufficient to give you a knowledge of the law?
I did.

2394. Did you read them before you arrived in India?
I went by sea, and I read them on my way out.

2395. Are there the same facilities for acquiring a knowledge of the Mahomedan law?
Yes.

2396. Are not there more?
I should not say there are more; there are some valuable treatises on Hindoo law and Mahomedan law; there is one by Sir William Macnaghten on Hindoo law, and also on Mahomedan law. He was a distinguished oriental scholar, and had a knowledge of Sanscrit.

2397. Are there any Native treatises on Hindoo or Mahomedan law translated?
There are many Hindoo and Mahomedan works of very great authority translated.

2398. And some on Mahomedan law?
Yes.

2399. *Lord President.*] Are those books generally drawn up by Mahomedans?
Yes; some of those on Mahomedan law were originally written by Mahomedans.

2400. Earl of *Harrowby.*] Are they in the shape of codes or of commentaries?
Both.

2401. Earl of *Ellenborough.*] When the Royal Charter established the Supreme Court at Calcutta, all the laws of England then existing were imported into the Supreme Court in Calcutta, were not they?
The principle upon which the Courts in India have proceeded, whether right or wrong, is, that in the 13th of George the First, 1726, at the establishment of the first Mayor's Court, all the Statute Law of England, up to that time, was introduced into India, and all the Common Law of England.

Hon. Sir Edward Ryan.

15th March 1853.

2402. Since that time, have any Acts of Parliament had force in India, except such as were specifically extended to India when they were passed, or were made applicable by the Legislative Council?

No.

2403. Was not it an embarrassment to you to have so much law to forget, as no longer applicable to the decision of causes?

It was a great embarrassment in some respects, and a great defect in the law. It was pointed out at the last renewal of the Charter by Sir Edward East, who was then examined, and who showed how desirable it would be to introduce all the statutes passed since the 26th of George the First, which would be applicable, in their nature, to India: nothing, however, was done upon the subject. I called the attention of the Government to it in an official communication in 1836; I offered to undertake a digest of that nature, or to point out such statutes as might improve the administration of justice in India; but nothing was done upon that occasion.

2404. Have you ever considered whether it would be possible, by any arrangement, overruling, of course, the present system of patronage with respect to appointments, to introduce a number of persons more competent to administer the law than the present officers of the Company's Courts in the Mofussil?

I think it would be extremely difficult; it involves, of course, the general question of judicial training. I do not know whether the noble Lord now alludes to persons being instructed in the Law of England in this country, and acquiring their knowledge here.

2405. Has the matter come under your consideration, and have you imagined in your own mind some improved mode of giving judicial knowledge to those who administer justice in the Mofussil?

I have considered that question: I must speak, however, with a degree of diffidence on all matters connected with the Mofussil, not being so well acquainted with it as with the administration of justice in the Supreme Court at the Presidency. The view I have taken of it is this: my opinion is, that in this country, presuming the Civil Service to continue as it is, you can do but little for informing persons, before they go to India, on subjects connected with the law, further than giving them the general principles of jurisprudence, perhaps some knowledge of the civil law, and, perhaps, some knowledge of legal and constitutional history: you cannot attempt to give them a knowledge of the art of administering the law; you can only give them something of its science and its general principles. It seems to me that Lord Dalhousie has now established a most important regulation, requiring greater familiarity with the vernacular languages of the country before persons can accept office; that, I think, is the great foundation. Having done that, my own notion is, that it is desirable, though I know there are opposite opinions, that they should be assistants to the Collectors and Magistrates, in the first instance, for a short period of time, for the purpose of getting familiarly acquainted with the Natives, and with the use of the vernacular languages. Perhaps, in the Presidencies of Madras and Bombay, they may do that more effectually than in Bengal. But in that way, especially in reference to questions affecting the land tenure of the country, individuals may acquire a knowledge of the Natives and of their habits and customs, which, I believe, is not to be acquired in any other shape, and which is essential for the administration of justice: I should then, according to my notions, which I am stating with the greatest possible diffidence, place them with some Zillah Judge, or, if it were possible, with some Sudder Amin to supply this defect. Under the former system the civil servants of the Company had a judicial training; under the old system they were appointed Registrars and Assistant Registrars to the Zillah Judge; in that position they obtained very considerable knowledge of the proceedings in the Zillah Court itself, and not only so, but they had the trial of causes, to a small amount, entrusted to them, and of those causes there was a supervision by the Zillah Judge himself; he signed the decree which they made, but they were entrusted with the disposal of those causes. In that way, in the early stage, there was something like a judicial training: that exists no longer.

2406. Is not it impossible that it should exist, inasmuch as the Zillah Judges exercise so little of original jurisdiction now?

No doubt it is; it is impossible that it should exist now in that shape.

Right Hon.
Sir Edward Ryan.

15th March 1853.

2407. *Chairman.*] Was the system changed under Lord William Bentinck?

Yes, I think it was under Lord William Bentinck, but I am not certain as to the date. It is quite true that now the Zillah Judge exercises only appellate jurisdiction: he has original jurisdiction, but he exercises chiefly appellate jurisdiction, and, therefore, there would not be that opportunity for instruction; but there would be an opportunity for instruction with the Sudder Amin and with the Principal Sudder Amin. From the Sudder Amin and the Principal Sudder Amin, they would obtain, as it seems to me, a knowledge of the mode of administering justice: in causes conducted by Native Judges they would have an opportunity of obtaining a knowledge of the Native character and feelings, and would acquire in that way, perhaps, a better judicial training than in any other. But I am aware that there is this political objection, if I may use that term, that it would be placing the European in subordination to the Native.

2408. Lord *Ellenborough.*] Supposing the present system of patronage did not exist, could you make any improvement in the plan which you have just detailed, supposing, for instance, you were permitted to find, wherever you could, Judges for the Mofussil?

I think it would be possible if there should be any amalgamation of the Sudder and the Supreme Courts. I am informed there are now one or two English Barristers who have some knowledge of the Native languages, and practising in the Sudder Court: if, in that way, they become acquainted with the Native languages and the proceedings of the Mofussil Courts, I should say, if a selection could be made of persons who were not of the established service, it would be possible that one or two persons so instructed and so educated might become as they do in this country—for it would be the same system—excellent Judges for the Mofussil, always presuming they had sufficient knowledge of the languages.

2409. Lord *Broughton.*] Would you apply that observation to the head of the Court himself?

Yes, I think perhaps they might be Judges of the Court.

2410. Earl of *Ellenborough.*] Is not it always a matter of doubt whether a person, though he does extremely well as a Barrister, would do well as a Judge?

Of course.

2411. Would not it be safer, if it were possible, to obtain for those situations persons who have already, to a certain extent, shown that they have judicial habits of mind?

I think judicial habits of mind of great importance, and therefore I think judicial training necessary, and I think, for that reason, they should not be removed from the Judicial to the Revenue Department of the service. But the matter of the greatest importance in India is a knowledge of the habits and manners and language of the people; and I do not see how that can be supplied in any way so readily as by pursuing the course which I have ventured to suggest.

2412. Is not it a serious defect in the present system, that persons are called on to exercise appellate jurisdiction who have never exercised original jurisdiction, or practised as Barristers?

I think it is a very great defect that they should not have exercised an original jurisdiction before they exercise an appellate jurisdiction.

2413. Earl of *Harrowby.*] You do not probably think it so essential that they should have practised as Barristers?

No.

2414. Lord *Monteagle* of Brandon.] Are there not difficulties with respect to persons such as you have described, who might be qualified to practise at the Bar in India, in their obtaining admission to the Bar; can a well-educated man obtain admission to the Bar of the Supreme Court without returning to England, keeping terms here, and becoming a member of the English Bar, or obtaining some other similar qualification?

No, not at present; I think it would be an improvement in the constitution of the Court that that rule should not exist.

2415. Is not it one of the consequences which has been anticipated and suggested by many from the extension of the university system to India, that degrees could

Right Hon. Sir Edward Ryan.

15th March 1853.

could be there conferred which would admit persons to the Bar without the necessity of a formal attendance at the Inns of Court at home?

Of course, if they were educated at the university, that being a step towards the qualifications required, it might aid their admission to the Bar.

2416. Earl of *Ellenborough.*] Would not that lead to the admission of a body of half-castes to the profession of the law?

Perhaps it might.

2417. Are not you perfectly aware that, almost without exception, a half-caste is not respected by the people of India?

Certainly not by the natives in the same degree as Europeans.

2418. Lord *Monteagle* of Brandon.] Do you think that arises from actual facts which are sufficient to justify it, or is it one of those prejudices of colour or caste which predominate in most mixed communities?

I think the feeling is very strong on the part of the natives of India as to the inferiority of East Indians as compared with Europeans.

2419. Have you been enabled at all to form a judgment with respect to the capacity shown by the natives of India in the judicial offices to which they have been of late admitted?

I have never been present at any of their proceedings in any of their Courts, and, if I had, I should not have understood them, not being acquainted with the native language; I can therefore only speak from repute, and from those judgments which have come before me, translated of course, in the Judicial Committee, where I have had considerable opportunities of seeing what has been done by the Courts in the Mofussil.

2420. What is the result of your experience of them?

I have been very much struck with their capacity and their power of administering justice, as far as I am able to judge of it in that way.

2421. Earl of *Ellenborough.*] Do you happen to know whether the Sudder Amins and the other Native Judges in the Mofussil are more usually Hindoos or Mahomedans?

They are more usually Hindoos.

2422. Are there many Mahomedans among them?

Not a great many.

2423. Mahomedans have rather a peculiar talent for the treatment of judicial subjects, have not they?

I am not able to say that they are superior to the Hindoos in that respect.

2424. Earl of *Harrowby.*] You say you have had an opportunity of seeing many of their decisions which have come before the Judicial Committee of the Privy Council; have those decisions been mostly affirmed or reversed?

The greater part of the appeals from the Sudder Courts in India have been affirmed. The appeal is from the Sudder to the Judicial Committee, but it comes of course from the Courts below up to the Sudder, and it is in that way I have seen their judgments.

2425. Lord *Elphinstone.*] It has been stated that those appeals have been affirmed because the subject was so little understood; do you think that they have been affirmed upon their own merits, or because the Judicial Committee sometimes were not able to understand the cases in the manner in which they were sent up?

I think the appeals have been affirmed upon their own merits. The cases in the Mofussil, of course, are not conducted with the same technical accuracy as they are in the Supreme Court, and, therefore, the case is very much overlaid with a multiplicity of points, both of fact and law, which have nothing to do with the real question in issue. But on searching carefully into those cases, you can always find out what is the real matter which has been before the Court; and in the greater part of the instances, as is shown by the result, their conclusions have been right.

2426. *Chairman.*] Do you consider that it would be an advantage to adopt the suggestion which has been made, that a Supreme Court of Appeal should be established in India, or do you think there is an advantage in having a sort of public

Right Hon.
Sir Edward Ryan.

15th March 1853.

public opinion brought to bear upon the administration of justice in India, by cases being brought to an Appellate Court in this country?

I am aware that the opinion has been expressed on high authority, that it would be desirable that the appeals should be final to whatever was the Appellate Court established in India, and that there should be no reference to the Judicial Committee in England. I am not of that opinion. I think it would be desirable to continue the appeals to the Judicial Committee; they are few in number, comparatively speaking, but the number of the appeals is no proof whatever of the benefit which results from having a Court of Appeal, because the power of appeal operates as a considerable check upon the decisions in the Court below, and leads to a more careful revision of the cases.

2427. *Lord President.*] An appeal to England takes place only in very grave cases, does it?

No. There are also cases which, I think, it would not be fitting for the Courts of India finally to dispose of without the power of appeal. During the time I was a Judge in the Supreme Court, a case of great magnitude in point of value, and of great difficulty in point of law, arose; it was called "The Mayor of Lyons against the East India Company;" it arose out of General Martin's will; it gave rise to a question of escheat, and if an escheat, whether it was an escheat to the Crown, or escheat to the Company: General Martin was an alien, possessing lands in Calcutta, which he devised by will in the manner prescribed by the English law for passing real estates. The question was whether, he being a Frenchman, could devise property in that way so as to pass by his will. That question was raised before the Courts there, property to a large amount being at stake, and that, I think, was a question not fit to be disposed of finally by any Court in India, affecting, as it did, such rights and such intricate questions of law. Other questions of a like difficulty may arise there, and it would be an anomaly if, for the Courts of India alone, there should be no appeal to the Queen in Council, existing as it does for all the other colonial possessions of the Crown.

2428. Lord *Monteagle* of Brandon.] Would the case of the resumption of lands furnish another illustration of the instances in which a British tribunal would be more satisfactory than a local one?

Perhaps it would; it would depend upon the constitution of the Court which had to deal with it; if the Court consisted of civil servants of the Company solely, as is the case now in the Sudder, it would not, perhaps, be so satisfactory to the natives in India that the Courts of the Company should finally dispose of questions affecting the revenue of the country, as to which there might be a feeling, though an unjust one, that they would not be dealt with so impartially there as before another tribunal differently constituted.

2429. Earl of *Ellenborough.*] The Judges of the Sudder Court are always expectants of a higher office, are not they?

The higher office would be that of member of the Council.

2430. Were you a member of the Supreme Court at the time that a cause was decided between the Government of India and the Raja of Benares?

I do not remember it; I think it must have been an appeal from the Sudder Court, and not from the Supreme Court.

2431. Will you have the goodness to state your views as to the amalgamation of the Sudder and Supreme Courts?

That was one of the matters which was suggested by the Judges in 1829; Sir Charles Grey, Mr. Justice Franks and myself were then Judges of the Court. I think the time is come when it would be very desirable to carry out the scheme which was suggested at that time, and that there should be a uniform system of Courts in the country, commencing with the Sudder Court, constituted, as I think it ought to be, of Queen's Judges, and also what are called Company's Judges; that is, that you should combine the knowledge and art of administering the law, which Barristers educated in England are supposed to possess, with the knowledge of the country and the people, which the civil servants are supposed to possess. I think that Court ought to have an appellate jurisdiction from all the tribunals within the Presidency where it is placed, and that it should also have an original jurisdiction; because I am satisfied that no Appellate Court works altogether well without an original jurisdiction being connected with it. This

Right Hon. Sir Edward Ryan.

15th March 1853.

Court might have original jurisdiction in certain cases in Calcutta; as, for instance, mercantile causes of great magnitude and value, and in criminal cases of importance. Perhaps one of the Queen's Judges might be the person to dispose of those, as the Chief Justices of the Courts of Common Law sit here at Nisi Prius at Westminster or Guildhall. I think also great good would arise from the Judges of that Court occasionally going to the different parts of the Mofussil, for the purpose of administering justice in important cases that might be reserved for their decision, and perhaps exercising at the same time a sort of supervision over the administration of justice.

2432. Lord *Broughton.*] You mean if the two Courts were amalgamated?

Yes, I am supposing them to be amalgamated, and to consist of Queen's and Company's Judges.

2433. Earl of *Ellenborough.*] Would you send as Circuit Judges the Queen's Judges or the Company's Judges?

I would rarely send one of the Queen's Judges; he could only be acquainted through the medium of an interpreter with the proceedings of the Court, whereas the Company's Judges would not need any such aid. There are cases, however, where it would be desirable to send one of the Queen's Judges; such cases have arisen where, in fact, there has been a denial of justice from the want of such a Judge going to the place, and the necessity of bringing the witnesses and the suitors to the Judge; I allude now to supposed offences committed by British subjects holding official appointments: trials of that nature, I have reason to believe, have not been undertaken by the Government for want of the power of sending the Judge to the place instead of bringing the witnesses to the Judge.

2434. Marquess of *Salisbury.*] Would not that necessitate the appointment of many more Judges?

I think not; the Sudder Court has consisted of from five to seven Judges, the number varying, I believe, from time to time; I should think about that number would be ample for the purpose. I think, also, that this Court, whatever name you choose to give it, Supreme Court or Sudder Court, or College of Justice, as it has been called by some persons, might exercise a certain supervision over the administration of justice in the Presidency, as the Sudder Court did to a certain extent, and may continue to do now, calling for returns from the Zillahs, Judges, Sudder Amins and Moonsiffs of the causes disposed of in their respective Courts, and exercising a general supervision over the administration of justice.

2435. Lord *Elphinstone.*] Does not that supervision now exist?

I think some alteration has taken place; but I am unable to speak accurately as to what has been done on this subject.

2436. Marquess of *Salisbury.*] Would it be desirable that young men, before they go out to India, should go through a more extensive course of judicial education, in order to enable them to accept judicial appointments in India?

The answer which I believe I gave to that question before was, that I thought, upon the present system of the civil service, it would not be desirable that they should go through any training in this country further than that they should become acquainted with the general principles of jurisprudence, and acquire some knowledge of the civil law and of constitutional law and history; but the art of the administration of the law they do not remain long enough in this country to acquire, and there would be no means of their doing so; in short, it would not be desirable, because they must acquire it, for any useful purpose, in India, commencing with a knowledge of the people and their language.

2437. You would not think it desirable that they should keep so many terms in this country before they could undertake any judicial office in India?

No.

2438. Lord *Broughton.*] Do not you think it would be a good arrangement that there should be a law college established at Calcutta for the instruction of Natives, so as to enable them to be Barristers, and subsequently Judges?

Natives, before they are appointed to any judicial office, go through a very severe examination as to their qualifications.

2439. By whom?

By officers appointed by the Government. I take it that the Natives have a thorough

thorough knowledge of the regulations and of the law which they have to administer before they are appointed to any judicial office.

2440. Lord *Monteagle* of Brandon.] Have you been able to form any opinion whether, in the course of instruction given at Haileybury, there is too much time given out of the short period of residence there to the study of the Sanscrit languages, as compared with other courses of instruction which are there pursued?

My own opinion is, that there is very little value in any instruction in the oriental languages in this country, further than becoming acquainted with the character of the oriental languages. The best application of time in this country seems to me to be the acquiring a general knowledge of literature and science. I think that would be the best preparation for young men, acquiring a knowledge of the vernacular languages after they go to India, which, in truth, they really do. I understand that the teaching of Sanscrit is about to be abandoned by the East India Company at Haileybury College.

2441. Are you aware whether, in the Hindoo and Mussulman College of Calcutta, there is any instruction given to the Natives in the laws of the country?

No, I think not; I think it was proposed when Mr. Cameron was Chairman of the Committee of Public Instruction, that one of the professors there should lecture upon Mr. Macaulay's Code, as it is termed; but I am not aware that that was carried out.

2442. Lord *Elphinstone.*] In the event of an amalgamation of the Supreme and Sudder Courts, in the manner which you have described, do you think it would be possible to attach some of the young men who are intended for the judicial branch of the service to the amalgamated Court, as you propose to attach them to the Zillah Courts, with a view to qualify them for the judicial office?

Yes, I think it would, and that would be a very good mode, up to a certain point, of judicial training. In a minute, which was prepared by the Law Commissioners, there is a suggestion of that kind: the subject of judicial training was before the Law Commissioners, and was reported on by them.

2443. Lord *Monteagle* of Brandon.] In their report there is an enlarged view taken of the necessity of more extensive training for the judicial offices than at present exists?

There is; a strong view of the necessity of some judicial training was taken by a distinguished member of the judicial service, Mr. Shakespeare. There is a minute by him upon that subject, in which he called the attention of the Government, at that time, to the question of judicial training. He complained very much of the want of judicial training in the Company's servants since the abolition of the offices of Register and Deputy Register.

2444. In the suggestion which you just now made, when referring to the difference of opinion which prevailed upon this subject, you stated your judgment to be in favour of a kind of initiatory education of those who were intended for judicial offices in their early progress in India in the Revenue Department; do you carry that opinion so far as to recommend that the several branches of the service, Political and Revenue and Judicial, should be interchangeable all through the course of a civil servant's life?

No, certainly not; I only propose that that should take place in the first instance, and for the purpose which I mentioned; but afterwards, I think persons should not leave the judicial service to be Collectors.

2445. You think it should be a status and a profession to which the party should permanently devote himself?

Yes, that is the view which I venture to take; though I am quite aware that opposite opinions are taken, because it is said, and with some truth, that in the Collector's office they have *quasi* judicial duties to perform.

2446. Was not it understood, when such an interchange was first introduced in India, that it arose out of a supposed exigency and the want of better qualified persons than they had at their command to undertake the higher Revenue duties?

I think, probably, the fact was, that the Government were very anxious to select

Right Hon.
Sir Edward Ryan.
15th March 1853.

select the most efficient men for that which they then considered the most important service.

2447. *Chairman.*] You spoke, in the early part of your evidence, of the delay which had taken place in carrying into effect the suggestions of the Law Commission as a thing to be regretted; do you think that the best practical way of dealing with the question now would be to re-establish the Law Commission, or to alter the Legislative Council; or can you suggest any other mode?

I may, perhaps, mention, very shortly, the delays which have taken place. I have spoken of the code generally, and that subject has been before the Committee on a former occasion. One matter was urgent at the time of passing the Act of William, and remains so still; namely, the making British subjects liable to the jurisdiction of the Company's Courts in the Mofussil: this you cannot do until you can administer to them a criminal law fitting for such persons. It is also urgent that some law should be administered to the class of persons I have named, who are without law—Armenians, East Indians and Native Christians, and foreigners of all descriptions. The criminal code was followed by a code of criminal procedure, which was reported on in 1848, and that code of procedure, as well as the criminal code, remain at present undealt with by the authorities either at home or in India. The Commission also recommended a College of Justice, as they call it, and something like what I have imperfectly sketched out, the amalgamation of the Supreme and Sudder Courts. They recommended a Subordinate Civil Court, as it is termed, for Calcutta: it was a Court for the trial of causes to a limited amount; but it was a plan of a Court framed with the intention of its being a model for the Courts to be established in the interior of the country. That Court provided for the examination of the parties themselves, for the fusion, as it is termed, of law and equity, and for what is said to have succeeded extremely well in the Tenasserim Provinces, the establishment of Assessors; that is, that the Judge should hear all the evidence, and, having heard it, should sum it up to three persons, who are termed Assessors; that the Assessors should deliver their opinion upon the case, but that that opinion should not be binding upon the Judge: the object of which was, that the Judge should have his attention fully alive to the case before him, and that he should exhibit to the public and all persons concerned, that he was fully aware of the points to be decided, by his being obliged to state fully the nature of the case, and show that his attention did not sleep. That plan was adopted, to a certain extent, in criminal cases, in the Tenasserim Provinces, and has succeeded: it is the system that was administered at Ceylon. That formed a portion of the plan of this Subordinate Civil Court. The examination of the parties to the suit, the Committee is aware, has been introduced into this country since that time, and the fusion of law and equity is one of the matters which is still under discussion here. I am only introducing this to show that the Law Commissioners in India have taken up and considered matters which are beginning to be thought of importance in this country. That plan was transmitted home, and it was rejected; and it is the only one of the plans proposed by the Law Commission which, I am aware of, has been dealt with by the authorities at home. I am informed this plan was submitted to the legal authorities here, the Attorney and Solicitor-general for the time being, who approved of the plan generally; but it was rejected by the Home authorities, and the Commissioners were desired to frame a Subordinate Court upon the model of Westminster Hall; of course the principal features of the plan which I have mentioned not being upon the model of Westminster Hall at that time.

2448. Marquess of *Salisbury.*] Were there any grounds stated for that rejection?

I am not aware what the grounds were.

2449. Lord *Elphinstone.*] Would there be any difficulty in securing competent persons for Assessors?

I think not. In the Mofussil you would choose Native Assessors, and they would be addressed in the native languages. Of course if a Judge had to address the Assessors in the native language, he must show that he had a knowledge of that language, and that he had also a knowledge of the case. I beg the Committee will not understand me as expressing my approbation altogether of this plan. I am

Right Hon. Sir Edward Ryan.

15th March 1853.

am only stating what the nature of the plan was, and its importance for consideration, and that it has at present been, on what grounds I know not, rejected.

2450. Earl of *Ellenborough*.] Would not very fit persons for Assessors be retired Sudder Amins, or individuals taken from that rank?

Certainly, they would be extremely good Assessors.

2451. Lord *Elphinstone*.] Were they to be paid, or were they to be empannelled as jurors are in this country?

I am not quite sure how that was to be dealt with.

2452. Lord *Monteagle* of Brandon.] Were there any other recommendations of the Law Commission, to which you have not yet adverted, which have not been carried into effect?

There is one other; a plan for a Subordinate Criminal Court. I should mention, that a number of criminal cases were disposed of by the Magistrates in Calcutta in a summary way, and certainly beyond the power which they possessed; this was brought to the notice of the Judges at the time I was Chief Justice: it was objected to; and then the question arose how those cases should be dealt with in future, and the Commissioners framed a plan for a Criminal Court for the disposal of such offences, and that plan was submitted to the Judges. It was approved of by me at the time as a plan for the disposal of those cases. This plan for a Subordinate Criminal Court was also meant as a model, which might be extended, if it was found to answer in Calcutta, and which was intended to have been established under the eyes of the Supreme Court.

2453. Was not there also a plan sent over for an Inferior Court at Bombay?

Yes, I believe so; but I am not so well acquainted with that plan.

2454. *Chairman*.] What do you consider would be the best practical method of dealing with the questions referred to the Law Commission?

Much would depend upon what is to be done with the existing Legislative Council, whether its powers are to be enlarged or not, whether it is to be constituted of different persons, or whether it is to be constituted in the same way as it now exists, upon which would depend very much the power of the Council for dealing satisfactorily with questions of this nature: certainly, unless the Council was differently constituted, I should say it would be very desirable to have the Law Commission continued, unless another plan were adopted, which has been suggested by Mr. Cameron in the Petition which he has presented to the House of Lords, which is referred to this Committee, and also in the Petition which he has presented to the House of Commons. He there states that a large sum has been expended upon the Law Commission; that great labour has been expended in framing Reports; that they have reported upon various subjects; that those subjects have not been disposed of by the Government, either at home or in India, with the exception of the Subordinate Civil Court, which was negatived. In that Petition, he prays that a Commission may be appointed of competent jurists, to consider whether the proposals which the Law Commission have made ought or ought not to be adopted; whether they are worthy or not worthy the consideration of Government.

2455. Earl of *Ellenborough*.] In point of fact, if the Law Commissioners do not travel round the country, might not their business be just as well done in this country as in India?

I should say not quite so well, because they have ready access to information there which we cannot get so readily in this country. My own impression is, that these questions as to what the Law Commission has done, what is the value of their recommendations, and what other improvements may be made in the administration of justice, might be satisfactorily considered by a Commission in this country; a Commission constituted of retired Judges and civil servants: at present some of the members of the Law Commission are at home; Mr. Millett, Mr. Cameron and Mr. M'Leod are at home; they were members of the Law Commission: there are retired Indian Judges, who would be willing to give their services for such a purpose; and there are some distinguished jurists who, I know, are willing to take part in such an inquiry; I think that these subjects might be referred satisfactorily to such a Commission. As the Criminal Code and the other plans of the Commissioners have travelled so frequently between England and India,

Right Hon. Sir Edward Ryan.

15th March 1853.

India, they might be better looked at now in this country, and competent opinions might be expressed by a body so constituted.

2456. Lord *Monteagle* of Brandon.] Supposing those steps to be taken, would they still supply that which seemed to be among the leading objects of the original creation of the Law Commission, namely, preparing and assisting in the current legislation of India?

Of course not; in the current legislation of India that must be done by the Local Government; nor do I think it would be desirable, supposing a Commission appointed here, whether a Parliamentary Commission or a Commission from the Crown, that there should be legislation upon what may be the result of their reports in this country; but it would be desirable to submit the results of their inquiries for legislation in India, and for adaptation there, with the local knowledge which might be requisite for certain parts of it. Of course the recommendations might be transmitted to the Legislature in India, with some authoritative recommendation from this country.

2457. Lord *Broughton.*] Would not that scheme be liable to this objection, that the same thing might happen to any such proposal which might be sent out from England as happened to the proposal with respect to the code, namely, the Indian Government put it into the hands of the Legislative Council, who altered the whole of it till it was not found in the least to resemble the old law?

I do not think that that would be likely to happen if a Commission were framed of the nature I have mentioned, whose report would express decided opinions upon such matters. That course has been followed by the Local Government, because no opinion has been expressed by the authorities at home, except in one instance, that of the Subordinate Civil Court, and, in 1838, as to the Criminal Code.

2458. *Chairman.*] Do you think that the knowledge of such persons whom you have named as persons who would be competent to undertake such a duty, would be sufficient to enable them to draw up a report which might be sent out to India and be finally adopted there?

I think so, certainly, with reference to the Criminal Code; it is upon questions of procedure that I should entertain a doubt. A general scheme of procedure, both criminal and civil, might be prepared; but there may be circumstances connected with some of the Courts in the country which might render it necessary that there should be some adaptations there. If the plan formed here were accompanied by some authoritative recommendation from the Home Government, they would probably be adopted by the Government of India. But all I venture to say is, that I think such questions might be better considered and disposed of now, by some such Commission as I have named, than by again sending them out to India for re-consideration, unless an efficient Law Commission were again established there.

2459. Would it be possible, in the instructions which were sent out, to limit the discretion of the authorities in India with regard to the alterations they might propose?

I think that is a very delicate subject: if they have powers of legislation granted to them, dictation as to the exact mode in which they are to legislate seems not to be a very consistent proceeding.

2460. Lord *Wharncliffe.*] Was not a discretionary power given to the Government of India, after the first code was sent home, either to adopt it or not?

In 1838 the Government at home told them that they might pass the code as a law.

2461. Are you aware whether, when that first code was sent home, the Court of Directors took the advice of such persons as those to whom you have alluded, persons experienced in Indian law in this country?

I am not certain what advice they took in this country; but I believe they took some advice.

2462. The reason why the Government of India thought it necessary to refer to the Home Government, after the revised code had been submitted to it, was, that the Governor-general considered the authority given to pass the first code

Right Hon.
Sir Edward Ryan.

15th March 1853.

was not sufficient to cover the second code, so many alterations having been made in it?

In 1850, Lord Dalhousie commenced to assist in the revision of what is called Macaulay's Code; that is the original code, and certain alterations were made by Mr. Bethune; those alterations were of such a character as, in his opinion, to change the nature of the code.

2463. The only reason for not proceeding with it in India, but referring it again to the Home Government, was, that the Government of India thought that the discretionary power given to them for the introduction of the first code was not sufficient to enable them to introduce the second after so many alterations had been made?

Yes.

2464. Supposing any revised code were sent out with the entire sanction of the Home authorities, would not that convey to the Indian Government the fullest authority for the introduction of it without any further reference home?

I think it would give the fullest authority; but as it would be an Act of the Legislature, they would have a discretionary power of dealing with it, of course.

2465. Earl of *Harrowby.*] You would allow the decision of the Indian Legislature to be final in such a case, so that whatever alterations they thought fit to introduce into the code so sent out should be final and valid?

Till altered, of course; like all Acts of Parliament, it would be subject to alteration.

2466. *Chairman.*] Will you state to the Committee what is your opinion as to the best way of improving the constitution of the Legislative Council, either for this special purpose or for the purpose of future legislation?

When the question of the Legislative Council was considered in 1829, previously to the renewal of what is called the Charter of the Company, the plan recommended by the Government and the Judges to the Home authorities was, that the Council should consist of the members of the Council of the Presidency and the Judges of the Supreme Court, and such other persons, not exceeding (   ) in number, appointed by the Crown, or the East India Company with the approbation of the Crown. There were various other suggestions made, but none were agreed on definitively but that I have mentioned. There was a suggestion of taking some distinguished merchant in Calcutta, or of taking a distinguished native, and constituting the Council, in fact, of several besides the Judges of the Supreme Court, it being agreed that the Judges should be members of the Legislative Council.

2467. In your opinion, would that be a good way of dealing with the subject?

If the Courts were amalgamated, I should say still that it would be very desirable to take some of the Judges from the Supreme Court of Appeal as members of the Legislative Council, not of the Executive Council, but of the Legislative Council.

2468. Lord *Broughton.*] Do you mean that they should form actually a part of the Legislature, or that they should only be assistants to give advice?

That they should be actually part of the Legislature.

2469. Do not you think it would be sufficient if there were one or two Mahomedans and one or two Hindoos of high character and extensive knowledge, who might be consulted by the Legislative Council or the Council of India previously to their framing the laws; would that answer the purpose?

I think not.

2470. Lord *Wharncliffe.*] Will you give your reasons for that opinion?

I think it would be very desirable that the Legislative Council should be in possession of all the views of the Government upon the matters upon which they have to legislate, and that they should be, in fact, acquainted with all the current business of the Legislature, relate to what subject it may. Natives, if consulted in the way proposed, would only be consulted on particular subjects. If the Council were legislating respecting Europeans, for instance, their advice would not probably be asked. I do not think it desirable to call in persons as advisers upon special occasions only.

Right Hon.
Sir Edward Ryan.

15th March 1853.

2471. Earl of *Harrowby.*] They should be integral members of the legislative body?
Yes.

2472. Would you see no danger in taking such a step?
I think not, if there were only one or two natives in the Council; but I must have the whole plan of the constitution of the Legislative Council and its number before me, before I can answer such a question satisfactorily.

2473. You would see no objection to the introduction of some natives into the Council?
Not if they were competent persons.

2474. Lord *Broughton.*] Do not you think the value of the present system depends too much upon the individual value of the Legislative Councillors?
Certainly.

2475. *Chairman.*] Do you think you would find Indians in that situation who would take a competent part in the discussion of the laws which it is proposed to frame?
I think there were two natives in my time, one of whom was well known in this country, and his cousin, who is at present in India, who would be competent to take a part, and would take a part.

2476. *Lord President.*] Those being men of European education, more or less?
Certainly, they were educated men.

2477. Lord *Wharncliffe.*] Would not the admission of such natives as you have mentioned excite some jealousy on the part of other natives of high rank?
Of course that is the great difficulty; how are you to make the selection; but my opinion is, that natives might be found able to give information to the Council in certain cases which the Council would, with difficulty, get from any other source.

2478. Earl of *Ellenborough.*] How is the Council now constituted?
The Governor-general, the Commander-in-Chief, the three civil servants and the legislative member.

2479. As the Council is now constituted, there are three individuals who must be understood to be perfectly well acquainted with the native prejudices and feelings?
Yes.

2480. Do not you think it would be very disadvantageous to introduce a large number of English gentlemen unacquainted with those native prejudices and feelings, and not to give some counterbalance by the introduction either of natives, or other persons acquainted with the native feelings?
I think it would be desirable to secure a full representation of the native feelings and opinions in the Council.

2481. If you appointed native residents in Calcutta, would not you rather give too much of a local character to the Legislature?
No doubt there is that difficulty, but there is also the difficulty of finding any suitable person in the Mofussil.

2482. Have you ever been in the Mofussil?
Yes; I have been in the North-western Provinces.

2483. You are aware how perfectly different the state of things there is from the state of things in Calcutta?
Yes.

2484. Lord *Broughton.*] Is not it the fact that, occasionally, the members of the Council of India receive their appointments rather as a reward for their previous services than on account of any peculiar aptitude on their part for that position?
I am afraid I am unable to answer that question; I do not know the grounds upon which those appointments are made.

2485. *Lord President.*] Do you think there is much desire on the part of the natives to take part in the proceedings of the Legislative Council?

Not

Right Hon. Sir J.

15th March 1853.

Not on the part of the natives generally, certainly, but probably on the part of such men as those I have named.

2486. Lord *Elphinstone*.] Do you suppose that the English merchants in the Presidency towns have any great acquaintance with the habits or feelings of the inhabitants of India?

No, certainly not; I think they are, generally speaking, little acquainted with their habits and feelings.

2487. They seldom leave the Presidency towns?

Very seldom, except to go to the indigo factories with which they are connected; they are large holders of indigo factories, and they have a certain knowledge of those indigo factories, and the natives connected with them.

2488. But not of the wants and feelings and prejudices of the natives generally?

No.

2489. Earl of *Ellenborough*.] Do not you think that a gentleman, who knew nothing of India but what he could learn in Calcutta, would, in point of fact, form a more incorrect view of it than if he had never been there at all, but had only read books?

I cannot say that.

2490. Lord *Wharncliffe*.] An opinion has been expressed by Mr. Bethune, and some other experienced individuals, that it would have been a much better course for the Law Commissioners to have taken to have introduced a Code of Procedure in the first instance, rather than a Code of Criminal Law; have you formed any opinion upon that subject?

The Law Commission did prepare a Code of Criminal Procedure adapted to the Criminal Code.

2491. Has that been published?

Yes, and reported upon, and sent home for the approbation of the Government here.

2492. Has it been laid before Parliament?

I think not.

2493. When was that code prepared?

In 1848.

2494. Was that immediately consequent upon the preparation of the first Criminal Code?

It was a report upon the scheme of pleadings and procedure, with forms of indictment adapted to the provisions in the Criminal Code. It was framed by Mr. Cameron and Mr. Elliot, and completed in February 1848.

2495. Was that completed in the form of a regular Code of Procedure?

Yes, and thrown into the shape of an Act.

2496. It has never been acted on since?

No.

2497. Lord *Monteagle* of Brandon.] It was never passed, was it?

No.

2498. Lord *Wharncliffe*.] And it has never been laid before Parliament?

I think it has not been laid before Parliament.

2499. Do you think the proper course of proceeding with reference to judicial improvement in India would be to introduce a code of that kind, reforming the procedure of the Courts of Law prior to the introduction of a Criminal Code establishing the law itself?

I think they ought to be simultaneous, and brought into operation at the same time.

2500. The opinion expressed by the authorities to which I have referred was, that a reform of the procedure was a much more important point, and that the grievances in India, arising out of the procedure in the Courts, were much greater than those arising out of any uncertainty in the law itself?

I do not think so; I think if the Criminal Code had been passed, supposing it

Right Hon. Sir Edward Ryan.

15th March 1853.

to have been a code fitted for British subjects, the existing procedure might have been adapted to it.

2501. Your opinion is, that the enactment of the law is a more important matter than the reform of the procedure?

They are both so important, that it would be desirable they should be brought forward together as far as possible.

2502. Lord *Monteagle* of Brandon.] Do the Stamp Acts, of which some of the petitions complain, apply to proceedings in the Supreme Court?

The Stamp Acts on legal proceedings do not apply to the Supreme Court in India.

2503. You are aware that they do apply to the other Courts?

Certainly.

2504. Have you ever turned your attention to them so as to be able to state whether they are, in their nature, oppressive, and a bar to legal remedies or not?

There are stamps upon almost every proceeding in the Mofussil Courts, varying from very small sums to very considerable sums; a witness is not examined, for instance, without a stamp. Almost all the formal proceedings are accompanied by a stamp. But with respect to the rates charged, a civil servant acquainted with the judicial proceedings in the Mofussil would state them more accurately than I can do.

2505. Earl of *Ellenborough.*] A petition cannot be presented without a stamp, can it?

I believe not.

2506. No man, however much he may be aggrieved, can present his petition unless he pays for a stamp?

No.

2507. Lord *Monteagle* of Brandon.] In those cases where the Stamp Acts prevail, carrying out the theory of legislation adopted at home, as well as recommended upon principle, have you any doubt that the stamp duties upon legal proceedings must act as a grievous impediment to justice in India?

I suppose they must, upon the same principles on which they act as an impediment in the Courts in Europe.

2508. From which Courts they have been very much removed?

They have been.

The Witness is directed to withdraw.

Sir Erskine Perry.

SIR ERSKINE PERRY is called in, and examined as follows:

2509. *Chairman.*] WILL you be good enough to state what office you held in India?

I was Judge of the Supreme Court for nearly 12 years, and Chief Justice during the last five years and a half.

2510. Lord *Monteagle* of Brandon.] You are but lately returned?

I returned in December last.

2511. Before you left Bombay, had accounts of the Parliamentary Proceedings in appointing Committees to consider the state of India, in expectation of the renewal of the Charter, reached the Presidency?

Yes; and we had the Blue Book containing your Lordships' proceedings last year.

2512. Had the subject created any degree of anxiety, or produced attention on the part of the people of Bombay?

It had created a very deep interest: perhaps I may further say, some disappointment, to find that no deeper inquiry was to be gone into.

2513. Was that attention and interest confined to the European inhabitants of Bombay and the servants of the Company, or did it extend among the natives?

I think the natives are deeply interested as to the proceedings adopted in this country, but they know so little of the organization of our institutions here, that it is not very easy to answer the question distinctly as to the particular nature of their interest. With respect to the mode in which improvements may be introduced, they do not know enough of our institutions to be able to direct their attention to it.

2514. Were they aware of the contingency arising during the present year of the approaching termination of the existing Act of the East India Company, and the necessity of coming to some new legislative arrangement?

Fully.

2515. Were there any meetings held at Bombay, and associations formed, to consider what steps should be taken?

Yes; an association was formed some months ago for the purpose of calling the attention of the English public and the Government to the state of India; and from that association emanated the Petition which I think your Lordship presented.

2516. Were you at Bombay at the time of those meetings, and the preparation of that Petition?

I was there during the whole period, and was applied to more than once by leading natives; but from reasons which may be easily imagined, I did not choose to communicate with them. One of my colleagues at the Board of Education, a native gentleman of great wealth and station, asked me several times what should be done about it. I told him I thought he had better confer with independent members of English society, who were not connected with the Government.

2517. You are aware of the names of the members of that association which are subjoined to that Petition?

Yes: I know the principal persons well.

2518. Are they fairly to be taken as representing the opinions of their class in the Presidency?

They comprise all the most respectable and wealthy persons of the Presidency of Bombay, that is, of the capital of Bombay, which comprises about 600,000 people; they are not very much connected with the inhabitants of the interior.

2519. Are you aware that some of the signatures to that Petition come from Poonah and other of the outlying parts of the Presidency?

Yes; Poonah is the capital of the old Mahratta empire; the old Mahratta noblemen live there in great numbers; a great many of those, I am informed, also signed the Petition.

2520. Do you consider that Petition, then, to have emanated from those natives themselves, or to have been suggested to them and framed for them by others?

I feel no doubt whatever, indeed I may say I know, that the suggestion of petitioning emanated from themselves; but I also know that the form of the Petition was much amended by English hands, but by gentlemen of great station and reputation in the Presidency, members of the Company's Service, and others, not by professional men rendering their assistance for money.

2521. *Lord President.*] The substance of the complaints proceeded from the natives themselves?

Yes, that I feel no doubt of. I was asked, myself, by a young native of great eminence to look at the Petition which he had drawn up, and to put it into better English, and into a shape which should be suitable for your Lordships' House, but I declined.

2522. Lord *Monteagle* of Brandon.] Taking into account that extent of very natural and justifiable European interposition, do you think a Committee of Parliament are justified in considering that Petition as speaking the opinions of a considerable majority of the intelligent, well-informed and wealthy inhabitants of the Presidency?

Undoubtedly; there may be some arguments introduced into it about the organic ir *Erskine Perry.*

15th March 1853.

system of Government as to which the natives of India can be very little informed; that, perhaps, was added by some of their European friends.

2523. *Chairman.*] Are you personally aware what proportion of the suggestions was made by the natives, and what by the English merchants there?

I should think those passages relating to the organic system of Government were added by European friends, not merchants, I believe: the friends to whom I allude were members of the Company's Service.

2524. Lord *Monteagle* of Brandon.] You do not mean, when you say they were added, that it was without the knowledge of the petitioners, but they were suggested and adopted by them?

Yes.

2525. *Chairman.*] Your knowledge of India is not confined to the Presidency town of Bombay?

I have been a great deal about India during the last 12 years; I have, in fact, travelled over every part of it; I have always used the vacations in going as far as I could.

2526. During your travels in India have you paid much attention to the general administration of justice there?

I have paid great attention to that subject: the Judges have been called on very much by the members of the Law Commission to consider various judicial reforms, and my own turn of mind led me to those studies.

2527. Have the suggestions as to judicial reform emanated from the Judges, or in what way have they been consulted upon them?

The Legislative Council and the Law Commission, when in existence, whenever they had any judicial measure on the tapis, would send it round to the Judges of India for their remarks. If it fell in with any previous studies that the Judges had been making, they had an opportunity of writing upon the subject at great length; and those being studies which have particularly occupied my attention for the last 20 years, I was glad to avail myself of the opportunity so afforded if I thought any improvements could be introduced.

2528. Do you believe that those suggestions were much attended to?

I think they were attended to, and that they made impressions upon the Local Government; but that is all the result which has arisen. That happened to them which has happened to so many other measures of administrative reform in India, that they were attended to, and nothing else.

2529. What is your opinion as to the general working of the present judicial system in India?

As to the Supreme Court, of course I shall be looked upon as a partial witness; but my own opinion, and I think there are facts to support it, is, that though there are many serious objections to it, it has been most satisfactory to the public. The defects are those which attend English Courts of Justice everywhere, namely, great expensiveness of proceedings, and the number of technical systems of procedure which exist; but those defects have been disappearing in later times, and very much so in India; and, notwithstanding those defects, I find in all the Presidencies the natives appreciate and esteem the Court as it exists.

2530. Do you consider it a good plan that the Supreme Court should be separated from the Company's Courts?

No; I by no means think it a good plan; I think it extremely undesirable that two systems of judicature should exist in the same country; but so long as the Government is handed over to a separate body from the real Government of the country, I think it is very desirable, in order to restrain excesses, and maintain the supremacy of the Crown, that the Supreme Court should have been established.

2531. Should you propose any amalgamation of the two systems?

I should be very desirous to see some amalgamation, but it is very difficult to suggest any such scheme apart from a large organic measure taken all together.

2532. Are you aware that a proposal was made, emanating from the Supreme Court, to that effect?

Yes; and that is one of the measures which I alluded to as having been very much attended to, but followed by no results. I think that an administrative measure,

Sir Erskine Perry

15th March 1853

measure, adding some professional man to the Sudder Adawlut, is indispensable, in order to the administration of justice.

2533. What do you mean by a professional man?
A man who has had a legal education.

2534. *Lord President.*] An English legal education?
An English legal education.

2535. *Chairman.*] An English Barrister?
Yes.

2536. Would you be satisfied with one who had had no judicial experience?
It would be better to have one with judicial experience, because you can never tell, *à priori*, whether a successful Barrister will make a good Judge; but it is not very easy to get such a person, unless you appoint one of the Judges of the Supreme Court.

2537. Do you mean an English Barrister who has been practising before the Supreme Court, or an English Barrister sent out from England?
If you find a good Barrister in the Supreme Court, he might be appointed. At the present moment there are two gentlemen of great ability in the Court at Bombay, who would be a credit to any Court, and would be fit to take the office at once.

2538. Lord *Monteagle* of Brandon.] Were they English Barristers?
Yes.

2539. What is the qualification in India to become a practising Barrister in the Indian Courts?
In the Queen's Courts formerly there used to be a restriction; in the Court at Bombay only eight Barristers were allowed to practise, but now it is unlimited: a person must be a Barrister in the Courts in England or Ireland.

2540. Or an Advocate in Scotland?
Or an Advocate in Scotland.

2541. Lord *Broughton.*] Does the admission come from the Judges of the Court?
Yes, on petition, to be admitted.

2542. Lord *Monteagle* of Brandon.] Does the same rule apply to the subordinate class, the class of practising Attorneys?
Yes; any one who has been admitted as an Attorney in England, or any Writer to the Signet in Scotland, may be admitted.

2543. Should you see any objection to entrusting to the Judges of the Supreme Court, irrespective of a call to the Bar in England or Ireland, or admission to the Faculty of Advocates in Scotland, the power to admit to the Bar of India persons who had not their professional degree from England?
I think that is one of the questions of justice to India, which is very urgent, that a young native, who may have great talents, and may desire to be called to the Bar, should be obliged to come over to England for five years to eat dinners at Lincoln's-Inn, in order to obtain permission to practise.

2544. Earl of *Harrowby.*] Have you anything equivalent to the Inns of Court in India?
Nothing whatever.

2545. Lord *Monteagle* of Brandon.] Do you not think that the best preparation for the Bar is that diligent study and self-preparation to which the hope of success will induce a young man to devote himself?
Yes; I think all lawyers are, in fact, their own instructors.

2546. Earl of *Harrowby.*] Is not that where the Courts are upon a very large scale, and acting before an enlightened community; is not there something more wanted in India, where there is a very small number of persons at the Bar, and a limited community much less enlightened?
I think it is desirable that such an institution as your Lordship points to should be established in India. I, and other Judges before me, have been very active in endeavouring

Sir *Erskine Perry.*

15th March 1853.

endeavouring to get a Law College established, and, no doubt, in time, such an institution will arise. At the present moment, they did me the honour, when I came away, to subscribe a large sum, in my name, as having been connected with education, for the purpose of founding a law professorship with it; and, if the Government assist them, as I trust they will, the commencement of such an institution as your Lordship is pointing at is made.

2547. Is not it very important to have a good tone of public feeling prevalent as part of the education of high-minded lawyers?

Yes; and I think that is springing up under our educational system.

2548. You think you see the materials growing up among the natives for a Bar of high character?

Yes; I speak from an experience of 12 years, having watched carefully the character of those young men who have been turned out from the colleges; and certainly the results have been most satisfactory.

2549. Lord *Monteagle* of Brandon.] Is that exhibited, within your knowledge, by the mode in which natives, appointed to judicial offices, are now competent to the full discharge of their duties?

They discharge their duties, legally speaking, very well; nothing could be more satisfactory than the accounts we hear of their sound and logical judgments; whether their conduct, morally, is so good, I cannot venture to say.

2550. Are you aware how their decisions are looked upon in the Courts of Appeal; in what light are they regarded in the Courts above them, as compared with European decisions which may be appealed from?

Their judgments are extremely good: I think your Lordship is aware of the statement of two leading Barristers in the Sudder Adawlut, that the judgments of the Native Judges were infinitely superior to the judgments of the Company's Judges who sat in appeal.

2551. *Chairman.*] Have you had opportunities of attending much in the Mofussil Courts?

I have had many opportunities when I have been travelling; I have sat on the bench with the Judge, with whom I may have been acquainted.

2552. Earl of *Ellenborough.*] Have you any knowledge of the native languages?

I have paid much attention to them; and know enough of Hindustani to make myself understood.

2553. What is your opinion of the procedure in those Courts?

I think that our judicial system in the Mofussil is by far the most defective part of our administration in India.

2554. *Chairman.*] In what respect is it considered to be defective?

I should say in the incompetence of the gentlemen who are put into the judicial office.

2555. Do you apply that observation to the natives?

To the Europeans.

2556. Lord *Elphinstone.*] You do not refer to the defective state of the law from the want of a code?

No.

2557. There is a code in Bombay, is not there?

It is very vague; it leaves matters to equity and good conscience, as it is called.

2558. You attribute the defectiveness of the judicial system rather to the Judges, and the want of judicial knowledge in those who administer it, than to the state of the code?

Yes. The Supreme Court is in point of fact a Native Court, because 99 out of 100 suitors are natives, and we English Judges administer the native law in a great many cases. In all cases of contract and succession it is the native law which we have to administer. We learn that law by looking to the books which have been published in great numbers: Sir Thomas Strange's Hindoo Law, Colebrook's Translations, and so on; therefore we have the same class of cases to deal with

Sir Erskine

15th March

with that the Company's Judges have. I may state, as my opinion, that the Supreme Court has given satisfaction to the natives by their administration, and that the Company's Courts, which administer the same law, have not given satisfaction.

2559. The proceedings in the Queen's Courts are in the English language, are not they?

Yes.

2560. Is not that an inconvenience to the natives?

Yes; no doubt it is a great inconvenience to the natives; but it is inevitable, from the fact of foreigners like the English governing the country. The evil you have to deal with in the Company's Courts is, either that you have to place English Judges on the Bench to administer justice in a language they do not well understand, or to surrender it entirely to native administrators, which would be against our interests; and perhaps we could not maintain our supremacy if we did so.

2561. *Chairman.*] How is the evidence of natives taken?

In the Supreme Court it is taken as it is in this country, *vivâ voce*, with cross-examination. In the Mofussil it is taken chiefly by depositions and by Native Officers of the Judge: very often it is taken out of the presence of the Judge, and without the Judge's knowing what is going on.

2562. Is there any security that the native gives the evidence he is reported to give?

The evidence is read over, and signed. All care is taken by the European Judges to secure authenticity in the deposition; but they have so much to do, and there are so many forms to be complied with, that they are unable to prevent mischief of that kind creeping in.

2563. Lord *Montcagle* of Brandon.] Have you known cases in which civil servants have been regarded as interchangeable, and have been removed from the revenue branch of the service to the judicial?

In the Bombay Presidency there is a different system from what there is in Bengal and Madras. In the Bombay Presidency, young men are allocated to the judicial service from a very early period. They go into office at the age of three or four and twenty as Judges, but they sit as Judges of Appeal only. They sit in judgment over the Native Judges. You will hear European Judges of that age overruling the decisions of those natives, their superiors in age and legal attainments, with great *sang froid* and confidence.

2564. Are the Committee to understand that they are placed as Judges of Courts of Appeal before they have acquired any experience in Courts of the First Instance?

Yes; they have no experience whatever as Judges of First Instance, and that is a great defect. On the other hand, in the Bengal Provinces, a Judge is removed from the revenue service, after 20 years' service as a Collector, and made a Judge; then he enters upon the duties of a Judge, for the first time in his life, at the age of 40, without any judicial education, except such as he may have got as a Magistrate, or in disputes about land.

2565. Lord *Wharncliffe.*] Do those young gentlemen, of whom you have spoken as exercising the office of Judge immediately upon their arrival in India, continue always in the judicial department of the service in Bombay?

They ought to do so, but they do not. The exigencies of the service may require them elsewhere, or their seniority may entitle them to a better pay. If a Collectorship is vacant, they apply for it, and if their standing justifies it, they think they are ill-treated if they do not get it.

2566. Lord *Elphinstone.*] A Collector is not better paid than a Judge, is he?

I am speaking of a young man who begins as an Assistant Judge.

2567. Lord *Wharncliffe.*] Is it also the case that civil servants are transferred from other departments to the judicial service at a late period of their service?

Often. A friend of mine came out to India about a year ago; he had been a Collector of Customs; he had paid great attention to that subject, and was desirous to get back to it; but the only vacancy which occurred, soon after his arrival,

Sir Erskine Perry.

5th March 1853.

arrival, was that of a Judgeship at Ahmedabad. He was put into that Judgeship for the first time.

2568. Lord *Broughton.*] Have you ever thought of the best mode of remedying the defects which you have seen in the Mofussil Courts?

I have been thinking of this matter for the last 12 years.

2569. What suggestion can you make with regard to it?

A number of remedies have been suggested as to legal reforms, and they have been considered fully by the local authorities there; they have run the gauntlet of a great deal of examination and cross-examination, but they have all ended in nothing; and therefore I have come to the conclusion that they all depend upon an organic change in the system of Government to be framed in this country.

2570 What makes you think that?

I explain it thus: all administrative improvements in India involve probably a different distribution of office, for example, the existing judicial defects, I think, can only be cured by appointing men of English legal education to the high judicial offices; but if such a step were proposed, it is clear it would involve at once the question of patronage.

2571. Such a remedy you therefore consider to be inconsistent with the present organization of the Home Government?

Yes; it would be a diminution of the patronage of the Court of Directors.

2572. Lord *Elphinstone.*] Might not the Judges you propose to appoint from this country be equally appointed by the Company?

Yes; but if the question were raised at home, and it were determined by the Home Government that the Judges appointed to administer justice in India should be trained men, the question might probably arise whether the Court of Directors were the best persons to select such men; therefore the difficulties would be such as might cause the Court of Directors to lay aside such a proposal altogether.

2573. *Chairman.*] Do you think a Judge going out in that way from England, without any knowledge of the customs and feelings of the country, would be so valuable as an ordinary Zillah Judge who has obtained some knowledge under a Collector of Revenue of the feelings of the natives?

I think he would be a great deal more valuable if he had a good knowledge of law and of human nature.

2574. Earl of *Ellenborough.*] Would not it be possible, if a person were sent out under those circumstances, to require that he should remain for a year or two within the precincts of the Supreme Court, and see in what manner justice was administered there, and make himself master of the language before he was sent to the interior?

I have no doubt, if the judicial appointments of the Zillahs were offered to English Barristers, you would have English Barristers going out to the Supreme Court, and fitting themselves at their own expense for such appointments.

2575. Would not the apprehension that English Barristers might be thought better qualified have a strong tendency to improvement on the part of the whole judicial service?

I think so.

2576. Would not the most competent persons to go out to India and perform those duties be gentlemen who are exercising in this country the functions of County Court Judges?

I think they would be very admirable servants.

2577. Is not there a great advantage in sending out a man who has considered legal subjects with a judicial mind, and not that of a Barrister only?

I think nothing can be more alarming than the idea of a young man being put upon the judgment-seat at 23 or 24 years of age.

2578. *Chairman.*] What would be the age of the gentlemen referred to in the last question, generally speaking?

I am not very well able to answer that.

2579. You

Sir Erskine Perry.

15th March 1853.

2579. You conceive, of course, that they would be considerably older than the young gentlemen to whom you now object; would not a man of that age have greater difficulty in acquiring the native language than a younger man?

Yes; but you can give a very excellent stimulus to any man of that kind going out to India to acquire the language by making his pay dependent upon it. I am supposing, if those offices were open, Barristers of the Supreme Court would make themselves qualified for the situations at their own expense; they do so, in fact, at present. Our leading Barristers have acquired the knowledge of the native languages.

2580. You refer now to Barristers practising in the Courts in India, not to the gentlemen referred to in the previous question, who have exercised judicial offices in this country?

Yes; I am supposing that the evil is seen as clearly as I think I see it, and as I believe you will find a great many witnesses from India will tell you it exists. I believe the judicial system of the Company is extremely defective. I received a pamphlet yesterday from a trustworthy gentleman, Mr. Norton, of the Madras Bar, which gives a list of examples of the extreme ignorance in judicial matters displayed by the Company's Judges, which quite condemn the system. My testimony from Bombay is to the same effect; I lived on terms of great intimacy with the Civil Service in India, and I had great opportunities of knowing what they think of it, and they also generally condemn it. The most eminent men in the judicial line point to the same conclusion, that it is indispensable to get professionally educated men to fill the judicial office. If that evil is as clearly perceived as I state it to exist, the only remedy which I think is capable of being suggested is to appoint professional men to the office. This may be obtained in one of two ways: you may either send out men from this country, like the County Court Judges, for example, to the Zillah Courts, which are comparatively few in number, the lower Courts being filled very well by native Judges; you may send out the English Judges whom you think it necessary to maintain, and then you may apply to them a stimulus for learning the language, by making their pay dependent upon its acquisition; or you may appoint Barristers from the Supreme Courts of India who have passed in the languages.

2581. Earl of *Ellenborough*.] Would not you make their appointment depend upon the acquisition of the language, giving them, in the first instance, 1,000 *l.* a year, which would be sufficient to maintain them for a year or two, but requiring that they should show their knowledge of the language and of the law before they were appointed at all?

Yes; there are very few able men at the Bar but would make themselves masters of the Hindostanee language in 12 months.

2582. Lord *Monteagle* of Brandon.] Would not the tendency of that system be to give ample time for preparation for the Indian Bar before those gentlemen were appointed to the judicial office?

Yes; I feel certain that all these alterations, which are of great importance, depend upon the frame of the Government in this country; but if I were to develope my scheme fully, I should connect what I have suggested with another improvement; viz., that those English Judges should administer justice in their Courts just as we do in the Supreme Court; that is to say, in our own language. The Native Courts of First Instance of course administer justice in the native language of the country; but the English Judges ought not to administer justice in a language they do not understand, or that they do not understand perfectly; therefore, though it is an evil that the Chief Courts of Appeal should administer justice in a foreign tongue, it is the less of two evils; because it is impossible to conduct an argument or fully appreciate evidence in any language that one does not thoroughly understand; and if you give the Advocate or Vakeel an instrument like his own tongue, with which the Judge is to meet him on equal grounds, it is extremely difficult to make your decision against him appear plausible or sound to the ears of the audience, because, in fact, it will frequently not be so. I therefore think it is very desirable that in those few Superior Courts the English language should be the language of business.

2583. *Chairman*.] Do you mean that the audience would have a better opinion of the soundness of the argument urged by the Judge if it was in a language which was unintelligible to them?

Sir Erskine Perry.

15th March 1853.

No; what I mean to say is this: he conducts the argument in English, and he delivers his reasons in English, and those reasons fly like wildfire through the Court, and are understood by the people in a few seconds, though they are delivered in a foreign language; that I have had experience of over and over again. What the public understand in a Court of Justice is not the reasoning of the Barristers and the Court; that is, generally speaking, technical; but what they do understand is the evidence they hear called in the witness-box, the facts spoken to by their neighbours and friends and enemies; what they desire to see is, the impression made by such witnesses upon the Judge. When they hear the Judge's decision, they fully appreciate what evidence he has believed, and what he has thrown over. There is another portion of the Court, viz., the Bar, who want to know the legal and logical grounds upon which he has formed a conclusion; therefore it is only strictly necessary that the Bar should understand the exact language which the Judge uses, if the public generally can hear the witnesses as they are called one after the other; but if the Judge hears the evidence in a language which he does not understand perfectly, and reasons upon it in language which he speaks still worse, he will not be able to satisfy an acute and critical Bar that he has understood either the evidence or the arguments.

2584 Earl of *Ellenborough.*] There is no Bar of Europeans in the Mofussil, is there?

No; but there is a large Bar of Vakeels, and those men are acquiring the English language day by day.

2585. Earl of *Harrowby.*] Would you have the Vakeels plead in English or in their own tongue?

In English; and that would be the greatest stimulus to the spread of our civilization which could be applied.

2586. Lord *Monteagle* of Brandon.] During the 12 years you have been in India, has the progress of the knowledge of English been very considerable?

It has. Mr. Elphinstone, who was the first promoter of education in that Presidency, was led to the conclusion that there were great prejudices against English, as in fact there were: the Brahmins saw that the spreading of English was the means of undermining their power; but the self-interest of the natives has pointed out that acquiring English is the most feasible mode of promotion and bringing themselves into notice.

2587. Has that acted powerfully in the extension of the English language?

Very powerfully.

2588. Earl of *Ellenborough.*] Do you find that the most respectable persons learn English?

They do at the Presidencies. In the Mofussil, the landowners and respectable persons live in a kind of isolation from the community; but they are declining every day.

2589. Lord *Elphinstone.*] Do you know that some of the Mahratta landowners have sent their sons to acquire English?

Yes.

2590. Earl of *Harrowby.*] Are there many English schools in India set up and supported by natives?

Yes; in the Presidency they have come forward largely with their funds to promote education.

2591. Lord *Elphinstone.*] Are there any of the Sudder Amins and Moonsiffs, who have proved such good Judges, who have had the advantage of an English education?

Some of them have; but it is very remarkable that those men who have done so well in the judicial departments have had no means of providing themselves with a legal education, except such as their own acumen could point out. We have no Law College, and no special means of instruction which they could adopt.

2592. Lord *Broughton.*] Are the Committee to understand you to say that you regard the present mode of disposing of the patronage; that is to say, the constitution

stitution of the Home Government, as an obstacle to any considerable improvement in the Courts of Law?

I have come to that conclusion, certainly.

2593. How would you remedy that; in what mode would you have the civil service, so far as the judicial appointments are concerned, carried on?

As I said before, I am afraid that any improvement of that kind, if taken piecemeal, can hardly be well considered: it all hangs upon the organic system.

2594. *Lord President.*] Would you give the appointment of the Judge to the Crown?

If I were asked by what means I would introduce these administrative reforms, I would say that, in the first instance, I would ask Parliament to do away with the patronage of the East India Company.

2595. As relating to legal appointments?

As relating to every appointment. I consider that every suggestion which may be sent home, if it interferes with the question of the Company's patronage, is not unlikely to be laid upon the shelf.

2596. In what way would you have the appointments made, if not made by the Company; would you say that they should be made by the Crown?

If the question of the distribution of patronage in India were to lie between the Crown and the Company, I certainly, as an independent observer, who have been thinking of these subjects for years, and have been always disposed to take a liberal view of politics, would rather see it in the hands of the Crown than in the hands of the Company. I feel certain that with the spirit which exists in the present day, the question of patronage never would weigh with a Minister of the Crown against the introduction of any administrative reform, if a good scheme were laid before him; whereas it appears to me logically to follow, from the mode in which the Court of Directors are remunerated, that they must entertain a most unfavourable bias against any scheme which does away with that very remuneration. From my own experience, having had a good deal of patronage to dispose of, I do not believe that public men, who have a high office to fill, who are remunerated in other ways, look upon patronage as anything but a great onus upon them.

2597. Earl of *Harrowby.*] You had no majority to secure in the House of Commons?

No.

2598. Lord *Broughton.*] You prefer that the patronage should be vested in the Crown to its being vested in the Company; but do you see any positive necessity for its being vested in either?

I guarded myself by saying, if that were the alternative, I should prefer to see it in the hands of the Crown: but I do not think that any such alternative presents itself. When the question of patronage is grappled with, it is remarkable, I think, how easily it may be disposed of. The number of valuable appointments which belong to the Company is very small; and the scheme which had been proposed and acted on by Lord Grenville and Mr. Wynne seems available for getting rid of the chief difficulty.

2599. Earl of *Harrowby.*] You mean by making the situations prizes of merit?

Yes. The valuable appointments in the hands of the Court of Directors are the Writerships.

2600. *Chairman.*] Do you consider that you always get the best man for active service by selecting the person who is able to carry off a prize at an examination in a school?

No; I should not be inclined to say so. I mentioned that as one of the modes by which the 28 Writerships per annum might be distributed. The Court of Directors and the President of the Board of Control have only had, on an average of the last 10 years, 28 Writerships a year to give away. The Cadetships in the army are more numerous; but they are so very like Ensigncies in the army, that they may come under the same class. I think the number of Writerships is so small, that one of those schemes might be applied to it with the certainty that it would operate pretty well.

2601. Lord

Sir Erskine Perry.

15th March 1853.

2601. Lord *Monteagle* of Brandon.] Have you known any instances of young men going out in that way?

Yes; I knew one very intimately: Mr. Escombe, the Secretary to the Government at Bombay, was one of their ablest servants; he was a prizeman from Westminster. Another system which has been suggested was that proposed and carried out to a certain extent in the last Charter Act, by which the Court of Directors were required to send up four names.

2602. Viscount *Hardinge.*] That applies to civil appointments only?

It does.

2603. Lord *Monteagle* of Brandon.] What was the result of that plan?

The result was very good. Sir Henry Elliott, I believe, was one of those who received an appointment direct.

2604. That was departed from in the year 1837; are you aware of the causes which led to that?

No.

2605. *Lord President.*] You do not consider an examination at a school as necessarily testing a man's fitness for practical work in India, but only as testing his general ability?

I am not sure that it does even that. I have observed in life, that those men who distinguish themselves at school and at the university, very often do so by great cramming, and go over the heads of much abler men than themselves who are idle.

2606. You require a different kind of ability than that of learning a book?

Yes: you do not require mere book-worms in India; you require men who can get on a horse and ride 30 miles before breakfast.

2607. Lord *Monteagle* of Brandon.] What is the system which you would yourself suggest?

I should prefer the system of choosing civilians, with the exception of the judicial branch, from the army. At present, it would weaken the regimental corps to do so; but if a system were established upon the principle which the French are following now in their African government, the vacancies in the regiments would be filled up, and the objections which now exist would not occur.

2608. Would you select from the Queen's officers as well as the Company's officers?

Yes. If the Queen's officers were able to pass the test which I would apply, I would select all civilians in India from the army, after five or six years' residence in the country, and after making themselves acquainted with the language and manners of the people; and after their capacity has been fully tested, then I would have a distinct judicial service, with a Commission from the Crown itself, located in the Provinces, able to restrain those military gentlemen from being too arbitrary.

2609. *Chairman.*] How would you treat Commissions in the army?

The Cadetships should be distributed, after a certain examination and test, as they are in France. It is very singular that the Ensigncies in France are just about the same number as the total number of appointments to the East Indian service, and they are selected, as your Lordship is aware, by general *concours*. I have understood from members of the French ministry, that there is not the least difficulty in getting the best young men for appointments, and that no evil exists in the shape of ministerial patronage, and no imputation of favouritism is made as to the way in which those selections take place. A Board of Examiners goes through the country two months before the admissions are made to the Polytechnic School and St. Cyr, and young men who wish to enter the army come up for examination.

2610. *Lord President.*] In that way, the army would be the only door to civil employment?

Except the judicial.

2611. Earl of *Harrowby.*] Why should success in an examination for the army be a better test than the other, which you have rather objected to?

I have

Sir Erskine Per

15th March 18

I have always understood that, for the army, you look to physical qualities as well as to mental: a young man who was evidently a mere book-worm, but for active life, would not be allowed to enter the army.

2612. You mean that they would not take mere book-learning as a test for entering the army?

o.

2613. Lord *Monteagle* of Brandon.] Are not you aware that the higher classes of Military Cadetships at Addiscombe are given away upon a very severe examination, and to young men who exhibit great scientific and mathematical knowledge?

Yes. Another mode which might be adopted would be, to apply the system prevailing in the English army; it is by sale; and I have never heard that the distribution of Ensigncies in the Queen's army leads to too much ministerial patronage, or to any evil, especially in these days, when the Commander-in-Chief appears to be a neutral personage, and not connected in interest with the Ministry of the day.

2614. Earl of *Ellenborough.*] Do not you think, whatever system were adopted for the purpose of selecting persons for civil or military situations in India, that that system would be the best which afforded the greatest chance of placing persons in such situations who are best connected, and have the deepest interest in this country?

I think it is very desirable to have a class of men as office-bearers over whom public opinion would exercise a beneficial influence.

2615. Do you think it is an advantage to maintain a system which has been represented to the Committee by the Secretary of the East India Company as one which sends out a very large number of persons from what he calls the middle classes, that is, the tradesmen of this country?

I have a very high opinion of the Indian service as it exists, and of the high tone which exists among them.

2616. Lord *Broughton.*] Do you mean both the services?

Both the civil and the military services. So far as I have observed, there is a very good tone existing among them; they are very critical upon one another; there is never any disposition to screen faults among themselves: if the civil service, as a body, repel any attack upon their own supposed privileges, they are the first to point out any deficiency in their own brethren.

2617. Lord *Ashburton.*] Do you see any want of loyalty in them as a body?

No; I do not see any of that democratic feeling which one does in the Colonies.

2618. Is there any want of attachment to the mother country?

There is a great deal of indifference towards it; they go out as boys, and do not keep up their connexion with it.

2619. *Lord President.*] As I understand you, the objections you have stated against the judicial branch apply to that branch only?

To that branch only.

2620. You do not express an adverse opinion to the character of the civil servants in India, generally?

By no means; the service contains a good many able men, with, however, too many of what are called, technically, bad bargains.

2621. *Chairman.*] Thinking, as you do, that there is a high tone now existing among the Company's servants, who are to a large extent derived from the middle classes, you do not think that it is necessary to create a new system, under which, in order to correct any existing defect, you would derive them from another class?

I think the system may be very much improved by which we send men to India; it is now a haphazard selection; that which makes the service what it is, is not the selection, nor the parties by whom it is made, but the circumstances of the country in which the individuals are placed.

2622. The question has reference to the desirability of establishing a purchase of those Writerships; if the high tone you speak of does now exist in the Indian service,

service, would there be any other effect arising from the purchase of the Writerships than a diminution of the salaries which they afterwards received?

Probably not. The great advantages which would attend the scheme which I have mentioned, I ought, perhaps, to point out: the military men who have been selected in this way for civil office have been some of the ablest men you have ever had in India; all the military men who are filling office are those men of whom we are most proud. One great advantage you would obtain by drawing upon the army in this way is, that you would have a very large field for selection: there are about 6,000 officers in India. Military men in time of peace, with a Native army, have very little to do; it is a serious complaint, and a common observation in society, that they are passing a life of idleness; but if they had a stimulus to improve themselves by learning the languages, and making themselves fit for the civil service, you would have them available for employment, and you would never have any of those bad bargains which are now so plentiful.

2623. *Lord President.*] Would you allow them to return to the army after having left it?

I think that military men are of opinion they ought not to return to the army.

2624. Lord *Monteagle* of Brandon.] Do you think that that system would have an influence in improving the character of the Indian army?

Yes; at present they withdraw a great many officers from the army, and the regiments are left without officers; but under such a system as I speak of, if a military man were withdrawn from the army, his place would be filled up by a new cadet, who would come with equal abilities to those of the man who had just left.

2625. Earl of *Harrowby.*] Would it not also have the advantage of accelerating promotion in the Indian army?

Yes, which is very much required.

2626. Lord *Monteagle* of Brandon.] Would not there be this effect produced, that in consequence of the great rapidity of promotion, it would always be a question with an officer whether he would not adhere to the army rather than adopt the civil service?

Yes promotion would go on so much more rapidly.

2627. Whereas now the Government is compelled to take, for all civil situations, the six or seven hundred gentlemen sent out as they are at present; the Government would then be able to select from six or seven thousand gentlemen similarly circumstanced?

Exactly so. Another thing to be considered is, that by appointing military gentlemen in this way, you would be able to get them on much smaller pay than you can do in the case of civilians who go out to India and enjoy what they think their birthright; you would obtain a much larger body of European agency than you have at present

2628. Lord *Elphinstone.*] Do you think that would be an advantage?

They all complain now of being overworked.

2629. If it is an object to raise the Natives, and to place them in higher offices, will not that object be interfered with in giving fresh facilities for the employment of Europeans?

When the time comes for the Natives to be employed in such situations, so much the better: but at present every European officer is overworked.

2630. Earl of *Ellenborough.*] Do not you think, with a view to giving a gentleman who has to act in civil situations in India a good feeling towards the Natives, you could not do better than place him for four or five years in the army before he is transferred to the civil service?

I think it is an admirable training.

2631. *Lord President.*] You would, in fact, limit the choice of the Indian Government to the army for civil situations?

Yes; India is essentially a military country. Habits of subordination and self-control are learned in the army, which admirably fit men for any situations under Government.

2632. Lord *Wharncliffe.*] How would such a system as that enable you to provide

Sir Erskine Perry.

15th March 1853.

vide for the subordinate appointments in the civil service which are now enjoyed by young men soon after they arrive in India?

That is the greatest evil in our system.

2633. Are there not offices which may be very well filled by persons possessing no very high qualifications?

Natives are every day pressing themselves forward, possessing the highest qualifications, and to them we may very well look for such appointments.

2634. In point of fact, if you substituted Natives for the present class of civil servants, and trusted to filling the higher civil offices from the army, you would reduce the number of civil servants very considerably?

Probably it would be so; and I think that would be a great advantage eventually for this country, and, certainly, immediately so for India.

2635. Lord *Ashburton.*] You stated that you objected to the patronage of the East India Company, because you found that the Home Government were disposed to reject those reforms which interfered with the interests of their nominees; does not such an opinion assume that the Board of Control does not perform its duties?

I am not sufficiently acquainted with the working of the Court of Directors and the Board of Control to give an opinion upon that subject; but I should gather, from the reading I have had on the matter, that the Board of Control is unable to interfere with any schemes of this kind which are sent up by the Court of Directors, supported by able and plausible arguments and great knowledge of the subject: I ascribe to that the fact of the inability of the Board of Control to overrule the decisions of the Court of Directors in those local matters.

2636. Lord *Monteagle* of Brandon.] Are you aware that in the Charter Act there is a clause restraining the Board of Control from interfering in any way respecting such appointments?

Yes.

2637. Lord *Ashburton.*] There is nothing in that Act, is there, preventing the Board of Control from overruling the Court of Directors with respect to any judicial reforms which may be suggested to them from India?

Practically, the case stands thus: a large scheme comes up. Suppose I had been called on to devise a scheme for judicial reform, I should have had to send it up accompanied with reasonings adapted to convince the body to whom I addressed myself; that would go to the Court of Directors, and it would be easy for able and ingenious men there, who had to deal with a scheme militating with their whole system, to meet my proposals with plausible arguments couched in a persuasive form; those would come before the President of the Board of Control for revision. It would be a subject, probably, on which the President would not have been consulted by any officers in India, and, therefore, I suppose very few Presidents would be found to take up *propriâ motu* any scheme of that sort.

2638. Earl of *Ellenborough.*] The President of the Board of Control would have the same means of judging that the Court of Directors had?

I am only attempting to account for what I know has been the fact, that these legal reforms have been invariably laid on the shelf; I suppose the reason to have been the existing patronage.

2639. *Chairman.*] Has the progress of legal reform been very rapid in this country?

No; lawyers in this country have been very powerful, and, till latterly, opposed it: the lawyers in India are not at all powerful, and the Judges who have been there, generally speaking, have been very anxious to promote reform.

2640. Lord *Wharncliffe.*] You told the Committee that you thought there were two members of the Bar of Bombay who were of a standing which would particularly well qualify them for appointment to the Bench?

Yes.

2641. Has it ever been the case that members of the Bar in India have been appointed to the Bench?

They have been appointed to the Bench in the Supreme Court.

2642. From

Sir Erskine Perry.

15th March 1853.

2642. From the Bar of the Queen's Court in India?
Yes.

2643. Has that been of frequent occurrence?
There has been one instance in Bombay, but there have been two or three at Calcutta: the present Sir Lawrence Peel was Advocate-general, and so was another Judge now on the Bench, Mr. Justice Colvill.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned till Thursday next,
Two o'clock.

Die Jovis, 17° *Martii* 1853.

LORDS PRESENT:

The LORD PRESIDENT.
The LORD PRIVY SEAL.
Marquess of TWEEDDALE.
Marquess of SALISBURY.
Earl of ALBEMARLE.
Earl GRAHAM.
Earl of HARROWBY.
Earl of ELLENBOROUGH.
Viscount GOUGH.
Lord ELPHINSTONE.
Lord MONT-EAGLE.
Lord COLCHESTER.
Lord WHARNCLIFFE.
Lord WYNFORD.
Lord GLENELG.
Lord STANLEY of Alderley.
Lord MONTEAGLE of Brandon.
Lord BROUGHTON.

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

Sir Erskine Perry.

17th March 1853.

SIR ERSKINE PERRY is called in, and further examined as follows

2644. *Chairman.*] THE Committee have had evidence from other witnesses on the subject of Mr. Macaulay's Code; are you of opinion that it is desirable that a Code of Criminal Law, applicable to the whole of India, should be adopted?

I think it is extremely desirable that some such code should be adopted, but I would extend my answer by applying it to a Code of Procedure also. The two things are somewhat distinct: the Criminal Code is a description of criminal offences and the punishments applicable to them; Criminal Procedure is the mode in which the trial should take place, and by which the judicial establishment should be formed: what I should wish to give as my opinion is, that it is very desirable that both should be applied to India.

2645. Lord *Monteagle* of Brandon.] There was an attempt made at Bombay in Mr. Elphinstone's time, was not there, to methodize the state of the law?

Yes, that was carried out, and some regulations were framed under Mr. Elphinstone, somewhat on the principle of codification; up to a certain point, it was very successful.

2646. Does your experience of the attempt in the time of Mr. Elphinstone support your general view in favour of a code for India?

Decidedly; I think the results of the Bombay regulations show that a more comprehensive scheme, framed on a more philosophical basis, would be desirable.

2647. Was there any difficulty in making that code intelligible, by means of translation, in the Bombay Presidency?

I have heard that the translation of the regulations has been pronounced by the best oriental authorities to be infamous; that is the word used.

2648. At what period was that made?

I suppose, shortly after the promulgation of the regulations.

2649. That translation is not a translation made by any authority, is it?

Yes, it was made by authority, and by a very distinguished oriental scholar, General Vans Kennedy.

2650. Earl of *Ellenborough.*] Has it force, as interpreted; does the Judge refer to the English original, or to the version?

I apprehend the Judge has reference to the English. I know, however, that Mr. Macaulay's Code has been translated into Hindostanee by a civil servant in the North-west, and he has stated that he has found no difficulty in communicating the sense of the enactments.

2651. Earl of *Harrowby.*] Have you heard what is the native opinion of it?

It has not been promulgated among the natives sufficiently, for any opinion to be formed.

2652. Lord *Monteagle* of Brandon.] Are not ordinary laws and ordinances translated into the vernacular languages of the country?

Yes.

2653. Have you experienced or heard of any considerable difficulty in making those translations?

I confess, I think any refined system of legislation on European principles is extremely difficult to convey to the natives in the vernacular languages; but those objections do not apply to a Criminal Code, where the facts you have to deal with are simple: all Criminal Codes are to some extent alike.

2654. Whatever the difficulties may be with regard to the translation of a code, would they not equally apply to the translation of the particular laws which that code might be held to embody in a more comprehensive shape?

Yes, certainly.

2655. Lord *Wharncliffe.*] Do those regulations of 1827 merely apply to the codification of the Criminal Law, or do they include the codification of procedure?

They attempt all those subjects; they are principally on procedure; they abolish those parts of the Mahomedan law which are not considered in accordance with the spirit of English jurisprudence, and they apply to the judicial establishment; but they are so short and jejune, that they leave the whole thing very much in the power of the Judge, and do not make known to the people what the laws actually are.

2656. Should you say from what you have ascertained in the Presidency of Bombay, that they have contributed much to the improvement of the administration of the law in the Company's Courts?

I have already given an unfavourable opinion as to what I conceive to be the case respecting the administration of justice in the Bombay Presidency; I do not think it satisfactory; I think the regulations have been of assistance, because they have afforded something of a guide. When I express my opinion as to the difficulty of translating complicated legislative enactments into the vernacular tongue, I beg to say I do not think that that objection applies to a Criminal Code, because the subjects there are so simple, that they are easily brought within the common range of ideas of all mankind. All Criminal Codes must agree in their main enactments.

2657. *Chairman.*] What is your opinion of the best way of finally determining upon the introduction of either Mr. Macaulay's Code, or an improvement of it?

I would say with respect to that, as with respect to other administrative reforms, it depends mainly upon the power in the Executive, the strength of will in the governing authority; somebody must be at the head of affairs to select the best instruments for a certain kind of business, and then to give validity to their enactments; that was how the Code Napoleon was passed. Lawyers all over the empire were discussing it for years, but disagreeing with each other, and nothing was done. Napoleon came into the council, and by his energetic statesmanlike views he at once drew order out of the whole system, and the code came forth in a very few months.

2658. Lord *Wharncliffe.*] Can you say whether it has been found necessary to introduce any material or extensive alterations into those Bombay regulations since they were brought into use?

Yes; alterations go on from day to day in a very objectionable form, I believe. I am speaking, however, of a code of laws which I have not administered myself: there

Sir Erskine Perry.

17th March 1853.

there are circular orders issued from the Sudder, saying that such and such is the meaning of such and such a clause.

2659. *Chairman.*] Do you think the authority you have referred to should be entrusted to the Governor-general or to the Board of Control?

I think an energetic Governor-general should be able to give such decisions if he has time.

2660. Has he time?

In time of peace, I think he has. I may give an illustration with respect to the Small Cause Jurisdiction: there has been a considerable discussion in India as to what is the best mode of dispensing justice summarily; great evils were experienced in Calcutta from the want of a Court where speedy justice in small cases might be administered. The Law Commission framed a Court by which the Judges of the Supreme Court should be enabled to dispense such justice in an easy way. The question was under consideration for years; a great deal of legal acumen was brought to bear upon it, and a measure was prepared which met, I believe, with the approbation of all the best statesmen in India, gentlemen of the Company's service who had become acquainted with native habits and manners, and members of the Supreme Government and the Local Government: the lawyers in India were not altogether so well pleased with it. When Mr. Bethune arrived in India, he brought forward another plan similar to that which has been adopted in this country. When Lord Dalhousie arrived, the two plans were laid before him, but he thought he had not sufficient authority to decide between the two; he therefore sent them both home to this country for the Court of Directors to decide. They, not finding themselves competent to decide, referred it probably to their legal adviser. As I said before, schemes fall to the ground, because the governing authority is not energetic or strong enough to decide between conflicting administrative measures.

2661. You would have preferred that Lord Dalhousie should have consulted the best authorities on the spot, and decided according to their advice?

I consider a high duty devolves upon a statesman who is put in a very high place; I think a man in high authority should be able to act upon his own responsibility after making himself acquainted with the facts of the case, and should accept the responsibility of his office.

2662. What would have been the instruments you would have thought best calculated to have assisted Lord Dalhousie?

The instruments were already in existence; you had a Law Commission, you had a Legislative Council, you had the Judges of the Supreme Court; all whose abilities were brought to bear upon the subject, and their views were before the governing authority.

2663. Various suggestions have been made to the Committee as to the body who should now decide or advise in order to a decision: one suggestion is the renewal of the Law Commission; another to reconstitute the Legislative Council, with the addition of assistants; and a third to establish a Commission in this country. Do you think either of those plans likely to be of use?

I am not quite sure with regard to the end with which the question is framed, whether it has reference to drawing up a code of laws, or to what.

2664. With a view of finally deciding upon the matter which has been so long pending, the subject of a Criminal Code in India, and with a view to the best mode of constituting a Legislative Council for future legislation in India?

I have already, in some respects, answered that question. The Law Commission framed a code, under the name of Mr. Macaulay's Code. That Commission was composed of very able men, Mr. Macaulay being one whom, of course, it would be presumptuous in me to praise. I have heard from gentlemen associated with him, that the labour bestowed upon that code, and the reference to all the codes within their reach, was such as to assure one that all the ability available for the occasion had been employed. Exactly the same process was gone through as in the case of the Code Napoleon in France. All that remained, therefore, was the necessity for some governing mind to say,—We have done all we can to procure the most intelligent assistance and advice, and now it remains to give effect to the conclusions.

Sir Erskine Perry.
17th March 1853.

2665. You think the best mode of proceeding in reference to that Criminal Code would be, that instructions should be sent from home that Lord Dalhousie should declare, if he has the power, that that code, without any of the alterations which have been subsequently recommended, should be at once enacted?

I do not see to what abler minds you can refer the matter; you have already selected the very ablest.

2666. Do you think the formation of a code of uniform civil procedure would be of use?

I think it is one of the most crying wants of India.

2667. Lord *Monteagle* of Brandon.] You are aware that a code to that effect was also the result of the labours of the Law Commission, and that that too has remained in abeyance?

That was a Code of Criminal Procedure, which is equally wanting. Mr. Daniel Elliot, of the Madras Civil Service, who was one of the Law Commission, and Mr. Cameron, drew up a code which was very carefully prepared, and the adoption of which I think would be of even more importance than the Criminal Code.

2668. Are you aware how many years that has been left in suspense?

I should think it must have been received five or six years ago.

2669. And nothing has been done upon it in that interval of time?

No. With respect to the Code of Civil Procedure, it would give to the Judges throughout the country, Native Judges and European Judges, the means of conducting causes on uniform principles, and such a code might, I apprehend, be very easily drawn up, because the best methods of inquiry into causes under litigation are the same everywhere; what is applicable in the Supreme Court, for example, is just as applicable in the most remote Court in the Mofussil. If a uniform method were adopted, the means of appeal would be so much more easy and economical, and the advantages, as it appears to me, would be extremely great.

2670. *Chairman.*] What points would you include in such a code?

What a code of procedure is thought generally to include is not only the mode of bringing on the case before the Judge, and modes of appeal, but probably, also, the Judicial Establishment, the mode in which the Court should be framed, and where the Court should be held.

2671. Who would be the proper body to draft such a code?

That is a difficult question.

2672. Lord *Monteagle* of Brandon.] Supposing the Law Commission were in existence still, and consisted either of the same men, or men of analogous acquirements to those of Mr. Cameron and Mr. Millett, and their associates, would not they be the natural persons to draft such a code?

They would be an admirable body, but it would require a strong governing authority, either in India or at home, to give effect to their recommendations.

2673. The suggestion is not that the Law Commission should have the power of passing a law, but that they should have the power of preparing a law for the legislative authorities and the Government afterwards to deal with?

What I have been endeavouring to impress upon your Lordships as the result of my observation is, that it does not signify how able the recommendations are, unless you have force in your Government to put those recommendations into execution.

2674. Regarding it simply as an authority to prepare a code, could you suggest another or a better one than the Law Commission as originally constituted?

No; I think the Law Commission was a very happily constituted body, a body comprising able jurists from this country, and the most able civilians you could find in the Company's service acquainted with judicial matters, though I am bound to add, from their own testimony to myself, they were not in all cases well fitted for those duties. A member of the Commission, who was considered one of the Company's ablest Judges, informed me that he did not know how ignorant he was of the matter till he had sat for five years with Mr. Macaulay as he did.

2675. *Lord President.*] That is to say, he had no peculiar knowledge to India affairs before?

He

Sir Erskine Perry.

17th March 1853.

He had a great deal of Indian knowledge, but not of jurisprudence and legislation, which is required in such a body.

2676. Lord *Monteagle* of Brandon.] He had been a Judge?
Yes, and was one of the best of the Company's Judges.

2677. Earl of *Ellenborough*.] Are you desirous of placing implicit reliance upon a code formed by gentlemen who are neither lawyers nor legislators?
No; I consider the legal mind there was Mr. Macaulay's: he had all the materials before him, the Code Napoleon, the Code of Louisiana, &c., and he obtained a great deal of local information from those gentlemen associated with him. In the case of one of them, Mr. M'Leod, Mr. Macaulay's testimony is, that he found the most remarkable exhibition of dialectics he had ever met with in his life; he has stated that he was one of the most subtil reasoners whom he had ever met with. Those were very great advantages to a legislator in drawing up a code of laws.

2678. *Chairman*.] How should the mode of taking evidence be treated in such a code both with regard to the Presidency Town Courts and the Mofussil?
I should think, whatever principles are considered, the soundest for taking evidence should be applied to all the Courts.

2679. Would you take the evidence orally in both Courts, or should the evidence be written in both?
I should have no hesitation in saying that oral evidence is the only evidence upon which you could well rely.

2680. Would not that require a great increase in the present number of Judges?
I do not think an argument of that kind can ever be brought to bear when you are framing a system of judicature. Whatever is necessary for attaining justice, I think, must be adopted. I was asked a question, in my last examination, with respect to the testimony which is delivered to the Zillah Judge, and whether there was any security for such depositions in writing being authentic: I gave rather a vague answer. What I intended to say was, that when testimony is taken down in writing in different parts of the Court in a language the Judge does not understand, and in a writing he cannot even read, as is the case constantly in the Presidency of Bombay, there can be no security whatever that such testimony is authentic: when it is read over to him in a different language from the writing before him, there is no mode of checking the party who reads such evidence.

2681. It depends entirely upon the trustworthiness of the native officer who assists the Judge?
Entirely.

2682. Lord *Monteagle* of Brandon.] That is an officer of an inferior class?
Very inferior, and very ill paid.

2683. Lord *Stanley* of Alderley.] Still, if you required oral testimony, would not there be a necessity for having a much greater number of Judges?
Yes.

2684. Lord *Elphinstone*.] Do you think the officers of the Mofussil Court are generally honest or corrupt?
The opinion certainly is that they are not honest.

2685. What is your opinion as to the native pleaders?
They have an extremely bad character.

2686. Have you ever known an instance of their taking bribes from their own client's adversary?
I cannot say that I have known such instances; I hear a very bad character of them.

2687. Lord *Monteagle* of Brandon.] Those observations you would not apply to the natives who are employed judicially, whose judgments and the character of whose judgments you referred to in your last examination?
I stated generally that I had a very high opinion of their intellectual capacities, but I was not so well able to speak to their moral virtues; but when one

Sir Erskine Perry.

17th March 1853.

recollects how ill they are paid, and what large power they have, and the imperfect supervision over them, it certainly cannot be wondered at that they should be open to imputations.

2688. *Chairman.*] Are the Moonsiffs sufficiently well paid?

I think by no means; they have a very large jurisdiction, and they only get 10 *l.* a month.

2689. Earl of *Ellenborough.*] Do you know from what class of society the Moonsiffs are taken?

They generally belong to what I may call the highest class in India; viz. the Brahmins.

2690. Are they generally of wealthy families?

Generally of poor families: some noblemen are being introduced among them now, but they are chiefly men who have attained to authority under the patronage of the Government.

2691. Marquess of *Tweeddale.*] Does your remark respecting the Moonsiffs apply to the Native Judges?

The Moonsiffs and the Sudder Amins constitute the majority of the Native Judges. The Principal Sudder Amins get a very good salary; they get 50 *l.* a month; but they are very few in number; the principal business of the country is transacted by the Moonsiffs and the Sudder Amins; that is, the second and third class.

2692. *Lord President.*] You think the pay is not sufficient to attract to the employment men of a high class in society?

I stated that they belonged to the Brahmins, who are of the highest class.

2693. Lord *Monteagle* of Brandon.] What proportion do the salaries paid to Native Judges bear to those attached to the inferior judicial appointments held by Europeans?

About 20 or 30 to 1, I think.

2694. That is, the European Judge of an inferior Court receives about 20 to 1, as compared with a Native?

A European Zillah Judge receives about 3,000 *l.* a year; a Moonsiff receives 120 *l.*

2695. Earl of *Ellenborough.*] Some have 15 *l.* a month, have not they?

I think so.

2696. Earl of *Harrowby.*] Should you see any danger to English supremacy in India if Natives were admitted to the exercise of high judicial functions?

No, not if the due proportions are observed; on the contrary, I think it would be a great means of attaching the intellect of the country to our rule.

2697. The class of men who would be likely to attain eminence are not those who would be likely to engage in hostile enterprises?

I think we should make friends of them at once, instead of giving their intellect an incentive to spread disaffection in the country.

2698. Earl *Graham.*] Do you think they are competent, in their present situation, to discharge their duties?

Quite so, so far as ability goes.

2699. *Chairman.*] Would you wish to see them more extensively employed than they are at present?

Decidedly, maintaining the due proportions, so as to take care that English supervision is always at hand: I never for a moment would put on an equality the Hindoo morality with that which belongs to the highest classes in this country, though I think it is to be very much improved by the contact into which they are coming with us, and the education we are introducing.

2700. Earl of *Harrowby.*] Would you insist upon an English education as one of the qualifications for office?

Yes, as a main instrument of our government, and a means of spreading a higher tone of morality.

Sir Erskine Perry.

17th

2701. And as an element of the fitness of a Native for high judicial functions?

Yes, I would make it a *sine quâ non.* Lord Hardinge introduced a test of that nature, and I believe, if carried out, it would be a great means of elevating the people of India.

2702. Lord *Monteagle* of Brandon.] Do you allude to the general order of Lord Hardinge with respect to the preference to be given to educated Natives of the college?

A notification of Lord Hardinge, that some amount of education should be a necessary step to admission to any office under the Government.

2703. Lord *Stanley* of Alderley.] Could you entrust the administration of justice to Native agency without European supervision?

I would associate Europeans very largely with the Natives, and maintain the preponderance in European hands. If I found a Native Judge fit to sit in the Sudder Adawlut, I would let him be in a minority in such a Court.

2704. You would not like to entrust the administration of justice extensively to them without the assistance of some European authorities?

No; I would always retain in the higher Courts a preponderating European element.

2705. Earl of *Harrowby.*] But you see no objection to associating, upon an equality, Europeans and Natives?

No, not the least.

2706. *Chairman.*] Has not the wish to increase the employment of the Natives in judicial offices, and, in order to find room for their employment, the restriction of the appointment of Europeans to the Appellate Courts, had the effect which has been so much complained of, of depriving Europeans of any primary jurisdiction, which would be the best means of fitting for the Appellate Courts?

Yes, necessarily so; it is a great evil complained of all over India.

2707. Lord *Broughton.*] There is an officer attached to the Bombay Government, called the Advocate-general, is not there?

Yes.

2708. Will you be so good as to mention what his peculiar functions are?

The duties of the Advocate-general, so far as I am aware, are to advise the Government upon every question involving a law point; he also practices in the Courts of Law on his own account as an ordinary practitioner; but he is available to the Government on every occasion when they require a legal opinion, or desire to know the effect of any clause in the regulations, or of any section in an Act of Parliament.

2709. Without reference to any particular individual, do you think that officer is of considerable advantage to the Bombay Government; does he so materially assist them as to make it advisable to continue the office?

I think the existence of the present office is very injurious to good government.

2710. On what grounds?

This also is connected with the subject which I referred to so strongly on the last occasion—patronage: that involves the whole point. The patronage of the office is in the Chairman of the Court of Directors. The Court, I believe—in fact I know—give strict instructions to their Government to follow implicitly the views of the Advocate-general upon all law questions; the effect of that appears to me, in the minor Presidencies, to be certainly to produce the worst form of government you can conceive of; viz., a lawyer-ridden Government, its views of statesmanship being over-ridden by mere technicalities: but these are inquiries which would be better answered by former members of the Local Government, such as Mr. Reid or Mr. Willoughby.

2711. *Lord President.*] That reference to him is confined to law points, is it not?

Yes; but they arise so often in everything to be done in a Government of record like ours, that they interfere with every act of the Government, and put statesmen-like men, whom one sees in the Local Government, under the control of what I should call a mere lawyer.

2712. Is the instruction from this country strictly confined to law points, questions of legal difficulty?

So far as my observation goes, it would lead me to conclude that they refer to him many other than such legal constructions.

2713. Lord *Broughton.*] That officer is appointed by the Court of Directors?

Entirely.

2714. Earl of *Ellenborough.*] Is not the Advocate-general looked upon as the leading counsel for the Government in all cases?

Yes.

2715. Is not there, upon the whole, a tendency on the part of juries in India to find verdicts against the Government?

I think the Government is never very popular with juries, either here or in India.

2716. Is not it particularly necessary that the ablest man should be employed by the Government under those circumstances?

Certainly.

2717. Does it happen that the Advocate-general is precisely the person whom the Government would select in all cases, as the most important and influential leading counsel to conduct its case?

I have always thought that the interests of the Government would be much better served upon all occasions, not only as regards Government cases in the Courts, but every point that arises, if they were able to consult the best authority to be had; and, if their work were not well performed, to go to another, just as, in this country, a party going to law selects from the whole Bar.

2718. Lord *Stanley* of Alderley.] Have you a numerous and efficient Bar in the Courts in Bombay?

An efficient one, but not a numerous one.

2719. Would there be a sufficient Bar from which to select an officer to be employed by the Government?

Undoubtedly.

2720. Lord *Broughton.*] What is the salary of the Advocate-general?

At Bombay it is 1,800 rupees a month.

2721. Lord *Stanley* of Alderley.] To what body would you be inclined to entrust future legislation in India?

I think that should be entrusted to the Supreme Government; the highest authority, that is to say, the Government of the Governor-general, with whatever Council might be framed for him.

2722. Would you think it desirable that it should be exercised by him, aided and assisted by a Legislative Council composed entirely of persons whose minds have been directed to those subjects?

I confess I do not see so forcibly as some do the necessity of any general legislation for India; it appears to me to be a country not yet ripe for any large measure applying to all portions of the land: one Presidency is so different from another, that an Act which may be a good one in Bengal, may be inapplicable to Bombay. The country is not advanced enough to understand complicated statutes, full of refinements in legislation; and, therefore, you should not attempt to legislate before the people are ripe for it. The country went on a great deal better when the Local Government had the power of framing regulations for the nonce, which had not altogether the authority of laws, but which would do for the occasion. The time, I think, is far distant when any universal legislation can be applied to India.

2723. Do you think it would be practicable to adopt any scheme, with a view of eliciting the opinions of the Natives upon laws to be promulgated for the use of the country?

My answer to that question is involved in my answer to the last, that I hardly think the people of India are ripe to consider such subjects; they do not regard them, except as they may refer to any immediate point pressing upon caste and religious observances.

2724. Do

2724. Do you think it would be desirable that laws should be promulgated by the supreme authority, which you seem to think should be the Governor-general, he necessarily having the assistance of a Legislative Council, without adopting previously some mode of ascertaining what the views and feelings of the Natives were upon such laws as affected their own interests?

I hardly think I stated that I thought the Governor-general should do this without a Legislative Council.

2725. Is it your opinion that he should have a Legislative Council, and, if so, how should that Council be constituted?

I think it is very desirable in a country like India, where so much is to be done, that the Governor-general should have a Legislative Council to consult with.

2726. How would you constitute that Council?

I suppose it must be constituted in the same way that the Council of India is constituted. I should consider that much of the evidence which your Lordships have already heard has furnished ideas upon that point. I think it should be done by selecting the best men all over India to fill such a Council; men who have risen to the front ranks by previous services.

2727. In point of fact, you would have no Legislative Council separate from the ordinary Council of the Governor-general?

I have not considered this point very much, but I should think that that was sufficient. I do not think that legislation on a large scale is as yet very much needed for India; I think more power for local legislation should be given to the Local Governments, and the time of the Supreme Government taken up with administrative improvements.

2728. Lord *Elphinstone.*] Are you aware that the French Government has a *Comité Consultatif de Jurisprudence Indienne* at Pondicherry, composed of nine Native members, whom it consults upon all subjects connected with the Native laws?

I am only aware generally of the fact.

2729. You are not aware how that has worked?

No.

2730. Earl of *Harrowby.*] Is the profession of a Barrister profitable at Bombay?

Yes; the leaders are supposed to make about 5,000 *l.* a year each.

2731. About what number are there?

I think there are six at this moment.

2732. Lord *Elphinstone.*] Are not the expenses of litigation in the Supreme Court very heavy?

They are very heavy; we have been diminishing them very much; but they are still too heavy.

2733. It was stated, the last time the Committee met, that the stamps which are paid upon proceedings in the Mofussil Courts are so heavy as to be almost a bar to justice; are not the expenses in the Supreme Court much heavier than the cost of the stamps in the Mofussil?

I should think the expenses in the Supreme Court are much heavier. You cannot measure, however, the comparative expenses of each system by the expenses of the suit, so well as by finding how long the litigation lasts in either Court. In the Mofussil Courts a suitor has so many appeals, that the suit goes on for years; and though the suit in the first instance may be originally cheaper, if it lasts over a longer period, it may cost the client more. In the Supreme Court the expenses are very heavy, much heavier than they ought to be; but the decision is arrived at rapidly, and there is an end of the litigation.

2734. Lord *Wharncliffe.*] In addition to the number of appeals allowed, is not it the frequent practice in the Company's Courts to remit cases for the purpose of their being reheard?

In the pamphlet which I alluded to on Tuesday last, I see instances selected from a volume of reports, of matters of small amount being tried five, six, seven and eight times.

Sir Erskine Perry.

17th March 1853.

2735. Earl of *Harrowby.*] What does the expense of proceedings in the Supreme Court arise from; does it arise from fees to counsel or fees upon procedure?

From both. The Supreme Courts were established, as your Lordships are aware, at the end of the last century, before many improvements had been introduced into English procedure: the whole of our complicated system was introduced bodily, and offices established for each department, and fees imposed to support the officers; and what I conceive to be a very erroneous principle was established, namely, that of sanctioning the charge of a rupee on every occasion where a shilling was demanded in England; by that means the expensive system of England was applied to a much poorer population, the expense being increased a hundred per cent.

2736. Lord *Elphinstone.*] The fees payable at each stage of the procedure are taxed, are they not, by the Judges of the Supreme Court?

They are taxed by a taxing officer, as they are in this country; the Judges have very seldom any cognizance of what the amount of the bills is.

2737. Are you aware that some years ago it was discovered that at Madras the officer whose business it was to tax those costs charged twice as much as he was entitled to do?

I am aware of the case to which the question refers.

2738. Earl of *Harrowby.*] Are the fees of the Registrar very heavy?

The fees of the Registrar are charged as a per-centage; they used to be 5 per cent. upon the amount obtained, and so they are still at Bombay. Five per cent. is paid upon the amount left by a testator: that operates as a heavy tax upon the widows and poor children of persons who die in the East.

2739. Marquess of *Salisbury.*] Are there any other offices in the Courts but those which are to be found upon the record at the East India House?

No.

2740. Have the Judges the appointment of any of the officers of the Court?

Yes, the Judges appoint nearly all the officers of the Court; it is the patronage of the Judges.

2741. Are those appointments held for life?

They are.

2742. Earl of *Ellenborough.*] Has there been any reform attempted of those offices in the Supreme Court at Bombay by taking the fees into the hands of the Government, reducing their amount, and giving salaries to the officers?

I have myself been endeavouring to remedy the existing evils for years; but I cannot boast of having received any great support. The Judges have themselves introduced a great many improvements. Just before I left India I had abolished one of the chief offices of emolument, the patronage of which belonged to myself, viz., a mastership, by taking inquiries in equity into the Judges' own hands, doing the duties ourselves. My colleague and myself have recommended to the Supreme Government that the officers should be put entirely upon fixed salaries, those fees being paid into a common fund, the Government assigning such sums for salaries as were thought necessary. I pointed out, in my Minute to Government, that those inquiries had been going on for 20 years; but nothing had been done.

2743. Marquess of *Salisbury.*] Are the officers paid partly by fees and partly by fixed salaries?

Some of the officers are paid partly by fees and partly by fixed salaries; but the fees form the chief part of the emolument, and the fees consequently sometimes rise up to 5,000 *l.* or 6,000 *l.* a year for duties which might be well performed for 1,800 *l.*

2744. Earl of *Ellenborough.*] Have any measures been adopted for the purpose of protecting monies belonging to the suitors and testators in the hands of the Registrar from any malfeazance on his part?

Yes; an effectual measure has been passed.

2745. A recent measure?

Yes; that has been passed since the disclosures in Sir Thomas Turton's case. The

Sir Erskine Perry.

17th March 1853.

The Government now has assumed the authority over those funds. The Supreme Court was formerly responsible for the due performance of the duties by their officer, but they had no efficient power to control him, as Sir Lawrence Peel showed when Sir Thomas Turton's case occurred. The Government, therefore, have assumed the control over those funds, and they have taken the appointment of the officer into their own hands.

2746. Lord *Elphinstone.*] The Registrar of Calcutta now has a fixed salary instead of being paid by fees, has he not?
I think he gets 3 per cent. instead of 5 per cent., but in Bombay he still gets 5 per cent., and, therefore, the chief object of importance has not been accomplished in Bombay and Madras; viz., saving the pockets of the poor widows and children.

2747. There can be no reason for paying the Registrar by a per-centage when the whole responsibility is taken from him, can there?
He is still responsible to the Government, and he has to furnish large securities.

2748. Would it not be much better for the money to be paid at once into the public treasury, giving a salary to the Registrar, so as to secure the suitor from any loss?
I apprehend the Registrar is obliged to do that now. The Government did not like to give anything out of their own treasury by way of salary, and, therefore, they looked to the resources of the testators for that payment.

2749. Lord *Monteagle* of Brandon.] You have no stamp duties in the Supreme Court, have you?
None.

2750. From your knowledge of the Native Courts, are you of opinion that the stamp duties at present taken there are a very considerable bar to the attainment of justice?
I think they are very oppressive to poor suitors.

2751. Is not there a duty of a rupee upon every application in the first instance?
I believe everything must come up before the local Judges on paper, and every paper must be stamped; I do not know the amount of the duty.

2752. What is the rate of wages of the poorer class who have to pay a rupee upon every application for redress?
I suppose, throughout the agricultural districts, which are the chief part of India, from 3 to 4 rupees a month.

2753. In a paper which is before the Committee, there is a reference to a statement said to have been made by you in India at the Town Hall of Bombay on the 9th of February 1852, to this effect, "The civil business in the Company's Courts is in the first stage conducted, speaking generally, by Native Judges; they are what the French would call Judges of First Instance, and, from their decisions, appeals lie to the European Judges, from whose judgment again an appeal lies to the Sudder Adawlut. It naturally follows that in those latter appeals a close comparison is made between the decisions of the Native and the European functionaries. Now I learn from Judges of the Sudder Adawlut that it was stated in open Court by two leading members of the Bombay bar, that with a few distinguished exceptions, the decisions of the Native Judges were in every respect superior to those of the Europeans." Is that a correct report of what you stated?
I believe so.

2754. That is now your opinion?
Decidedly. I state there a fact, and not my opinion. The opinion I cite is the opinion of men more competent to speak on the subject than myself, because they have practised before the Courts, and, therefore, have had a professional necessity of examining the judgments of either party, which I myself have not.

2755. Were those gentlemen of sufficient authority, in your judgment, to warrant your adopting their opinions?
• They are the gentlemen whom I mentioned to your Lordships on Tuesday last, whom I thought eminently fitted to preside over the Company's Supreme Court, if such a Court were established.

Sir Erskine Perry.

17th March 1853.

2756. *Lord President.*] With reference to the want of judicial training for Judges in the Company's Courts, a former witness stated that the duties of a Collector in India were, to a large extent, judicial, and in that respect afforded some kind of training for the office of a Judge, especially in relation to all questions arising out of land tenure in India; do you agree in that opinion?

I agree that the experience a Collector gets by his service in that capacity is extremely valuable in dealing with any judicial point which comes before him; it necessarily makes him much acquainted with the manners and habits and tenures of the people; but I do not think it is a good judicial training for a Judge.

2757. You do not think it is enough?

No.

2758. Lord *Elphinstone.*] Have not you heard of cases in which the want of that knowledge of the habits and feelings of the Natives has produced very fatal effects. Was not there an instance some years ago in which a Zemindar was summoned to attend a Court; being a man of very high caste and sensitive feeling, he thought it was a degradation, and not only killed himself, but destroyed all his family to avoid the disgrace?

Yes, I have heard of instances of that kind.

2759. Earl of *Ellenborough.*] When some portion of the country, now connected with the Government of Bombay, was first occupied, certain families were exempted from the jurisdiction of the Courts, were not they?

So they are now; some of the noblemen of the Mahratta Empire have a special Court of their own, in which they do not appear as suitors, but in a more amicable way; the agent settles their disputes for them.

2760. Lord *Elphinstone.*] Do you remember a case which occurred at Madras, where a murder was committed in the family of the Nabob of the Carnatic? The Begum was tried before the Supreme Court and sentenced to death: the mere fact of her being amenable to the Court being felt as a dreadful disgrace?

I do not see how, if we establish our rule in the East, we can allow Begums to commit murder with impunity.

2761. Are you aware that she was not executed?

I think she got off altogether.

2762. Marquess of *Salisbury.*] Is it in the power of the Judges to alter the fees in the Courts?

To a certain extent it is; but the difficulty of the Judges introducing any legal reforms in India is so great that it requires a very ardent enthusiast indeed to attempt the task.

2763. From what does that difficulty arise?

It arises from exactly the same cause from which arises the opposition to every administrative improvement—the patronage in this country. The Supreme Court is not a favourite of the Court of Directors; and, without any desire to throw a stigma upon a body of men whom I respect personally very much, I can state that every suggestion for improvement which has gone up from the Supreme Court has been received very coldly, and in such a manner as to deter very many from attempting any movement of the kind.

2764. It is not in the power of the Judges to alter the fees absolutely of their own authority?

I may illustrate what I have to say by speaking of the attempt made by the Judges of the Court to which I belonged, to introduce a simpler system of judicature at Bombay. Previous Judges, among whom was Sir James Mackintosh, had constituted a Small Cause Court for the administration of justice simply. It answered extremely well, and was very popular with the Natives, and thereupon Sir David Pollock and myself extended the jurisdiction considerably, and on principles which are now fully accepted as sound throughout England. This was much objected to by the lawyers of the Court, the attorneys principally. It cut down their emoluments very largely, and opened the door of course to a very great extension of the system. I do not know how the result was produced, but I know that in consequence of this opposition by the lawyers, the protests which were sent home were conducted to a successful end, and the Court of Directors issued peremptory orders that no such legislation as was suggested by the Supreme Court

Sir Erskine Perry.

17th March 1853.

Court should be adopted. The consequence was, that the endeavours of the Judges to simplify justice and take more work upon themselves, without any addition either of emolument or of honour, were frustrated.

2765. Was not that a case in which it was attempted to introduce a new Court of Judicature altogether?

No; the Court was existing already, and had been sanctioned by nearly 50 years' successful experience; the attempt of the Judges was to extend it; it having gone up to 350 rupees, the Judges endeavoured to extend it in the first instance to 600 rupees. They then recommended to the Legislature—and it was approved of by the Local Government—to extend it to 1,000 rupees, as an experimental measure, when the orders from the Court of Directors forbade any legislation upon the point.

2766. The question which you were asked was, whether the Judges had absolute authority to regulate the fees of their Courts?

The Judges in Bombay lately having been thwarted in their endeavours to establish a Court such as I have been speaking of, were still very anxious to reduce the expenses of litigation to which I have been referring, and of which I have been complaining. They introduced a new table of fees for the smaller class of suitors in small cases—fees quite large enough, as we thought, to meet all the difficulties of the case. Our orders have also been appealed against to the Privy Council, and they are now, and have been for months, *sub judice* as to whether they are to be sanctioned or not. Your Lordship therefore will easily see that the difficulties in the way of the Judges undertaking a Quixotic task of this kind are very great, and such as necessarily to deter men, unless they are very warm enthusiasts, from interfering in the matter. I understand, however, the Privy Council have just sanctioned the reductions which we have made.

2767. Earl of *Ellenborough.*] The Committee are to understand that the Supreme Court of Bombay suggested that there should be a legislative proceeding for the purpose of extending the jurisdiction of that Court?

Yes, they attempted what they could on their own authority; but it is not of course constitutional for Judges to attempt too much in the way of legislation themselves.

2768. Thereupon was a Bill published?

Yes; an Act was read a first time.

2769. Of that the Court of Directors obtained cognizance in the usual way?

Yes.

2770. And thereupon they inhibited the Supreme Government from passing that into a law?

We were informed, not exactly officially, but *quasi* officially, that the Court of Directors had issued an order that no legislation on the subject should take place unless under their own directions.

2771. Though they did such a thing, do you believe that according to law they had the power to do it?

I apprehend the power does not belong to them under the Act.

2772. Lord *Monteagle* of Brandon.] Are you aware that similar circumstances took place in reference to a Small Debt Court or a Court of limited jurisdiction at Calcutta, of which there was the same inhibition on the part of the Court of Directors?

I heard so.

2773. Lord *Wynford.*] Did the Court of Directors assign any reason for their opposition to your recommendations?

I never heard the reason; but I may state that when the Act which the Court of Directors did order to be passed with respect to India generally, namely, an Act framed on the model of the County Court Act in England, was attempted to be applied to Bombay, the Court I have already spoken of, framed by the Judges, being in existence, there was considerable dissatisfaction at Bombay at the new measure being introduced, and a Court which had given general satisfaction during a long period of years being abolished. The Local Government gave their opinion on behalf of the existing Court formed by the Judges; the Judges were applied to; they

Sir *Erskine Perry.*

17th March 1853.

they expressed a very strong opinion as to the inexpediency of introducing the new measure when the old Court had been found to succeed; and the public of Bombay petitioned the Court of Directors to prevent the jurisdiction of the Supreme Court being taken away, and this beneficial Court abolished. During this period the Governor-general came round to Bombay and found that state of facts existing, and that the Government, the Judges, and the public, were all unanimous for keeping up the Small Cause Court administered by the Queen's Judges; but it seemed the orders from home were peremptory. The Court was abolished, and the new Court established, of which for some reasons I doubt the legal foundation, because it takes away the jurisdiction of the Queen's Court established by Act of Parliament. So, by this course, the Judges who had not too much to do, and who were inclined to do more work, were even less occupied than before.

2774. Earl *Graham*.] When were those orders issued?
It was at the beginning of last year, I think.

2775. The orders must have been approved of by the Board of Control?
I conclude so.

2776. Therefore, in reality, the Directors are not absolutely responsible for those orders?
No; I speak of the Court of Directors because in general society the whole authority is supposed to be with them on such matters of administration; the Court is always supposed to be hostile to such improvements. I have heard that Mr. Cameron was looked on as a visionary, and that those improvements which he suggested were deemed unsound; the Court were afraid of them; that is the common opinion prevailing in society in India; whether sound or not I cannot say.

2777. Marquess of *Salisbury*.] Did the appointment of the new Court give any additional patronage to the Court of Directors?
Yes; it necessarily threw the appointment of Judges and officers into the hands of the Company. I protested very strongly against the introduction of this new Court, on two grounds: first of all, that it was an attempt at legislation which I did not think competent to the Legislative Council, because it was interfering with the jurisdiction of the Supreme Court, which was established by Act of Parliament. It is evident that, if the jurisdiction of the Supreme Court could be abolished to the extent of 500 rupees, if the new Court worked well, the next year might see an Act passed abolishing the jurisdiction up to 50,000 rupees. Secondly, I made a still stronger objection on public grounds, that the new Court was wholly unnecessary and pernicious, because the Queen's Judges were doing more in the way of exercising a beneficial summary jurisdiction than the new Court proposed to do.

2778. In what shape did you make your objection?
In the usual official shape. When the measure was sent to me for my opinion, I transmitted a minute on the subject to the Governor-general in Council.

2779. Earl of *Ellenborough*.] Have the Judges clerks or secretaries?
They have clerks.

2780. From what class do they take them?
They, generally speaking, belong to a higher class than the Judges' clerks in this country; they are in the rank of gentlemen; at least that is the case in Bombay.

2781. Are they Europeans?
Yes.

2782. Not lawyers?
No, not necessarily so.

2783. Have they ever been so?
Sometimes they have.

2784. They are not Barristers?
I think Sir David Pollock's clerk, who was his son, was a Barrister.

5. Do not you see serious objections to allowing the son of a Judge, being ster, to be also his clerk?

Certainly,

Sir

17th

Certainly, if he were a practising Barrister, it would be very objectionable; I am not aware, however, that that fact has existed.

2786. Are there any other instances of the kind that you are aware of?
I have never heard of a practising Barrister being a clerk.

2787. Earl of *Harrowby*.] The Committee understand from you that, in the public mind, the Court of Directors are looked on as practically responsible for every measure of the Government?
I think there are very inaccurate ideas abroad of what the Government is at home; sometimes it is called "John Company;" sometimes "The Begum." I do not think the natives practically know what the governing authority is. Among English writers and the English inhabitants of India, the authority of the Court of Directors is considered to have the great practical bearing upon the affairs of India.

2788. Marquess of *Tweeddale*.] The native population generally regard it as a Government by the English, without any reference to the form?
Yes.

2789. Lord *Stanley* of Alderley.] Do you think it would be desirable to substitute the name of the Crown for the Company?
I think it would add to the power of good government very much.

2790. Earl of *Ellenborough*.] Do you think it would make the officers of the Crown much more obedient than they are now?
I think its effects generally would be good.

2791. Earl of *Harrowby*.] Do you think it would have no injurious effects, by casting upon the Crown of England greater responsibility for anything which might be unpopular among the natives?
I think not.

2792. Earl of *Ellenborough*.] Would not it tend to promote a much higher feeling of public duty on the part generally of the servants in India?
I entertain, as I have said before, a high idea of their sense of public duty; I think there is a good feeling among them; but it would simplify the Government extremely, it would prevent collisions, it would make the servants of the Government more alive to subordination and respectful, and would bring with it many advantages, in my opinion.

2793. In this country, public servants consider they are under an absolute obligation of secrecy; that is not the case in India, is it?
Everything oozes out in India sooner or later.

2794. *Lord President*.] Do you think that would be altered by changing the name of the Government from the Company to the Crown?
I do not know how it would operate to produce that change.

2795. Lord *Stanley* of Alderley.] Would it have the effect upon the native princes of making them more ready to pay deference to the Crown than to the Company?
Undoubtedly so.

2796. Lord *Broughton*.] Do you think it would have much effect in reference to our own native subjects in India?
I do not think it would have a very great effect; but what effect it had would be good: it is a great evil to have two systems of Government in a country, and to have the chief servants of the Government not respecting its authority.

2797. Lord *Wharncliffe*.] You told the Committee at the outset of your evidence, that you had never lost an opportunity of obtaining information upon the working of the Company's judicial system in the country parts of the Presidency; had you ever any opportunity of witnessing or examining the operation of the Punchayet where it was in use in Bombay or in any other part of India?
I only know it by reading of it.

2798. You never saw it in operation?
No; there is an able paper in the Bombay Transactions describing the operation of the Punchayet; it seems extremely well suited to a rude state of society; its

Sir Erskine Perry.
——
17th March 1853.

its decisions are generally given with great purity, as I have heard from other officials, and they obtain the respect of the village communities. Attempts have been made in Bombay, which, however, is not in the state of civilization I am describing, but where there is a complicated state of society, to get their causes referred to the Punchayets; but such attempts have been generally resisted, and, I think, upon sound grounds, because it is evident that the Punchayet can only give satisfaction so long as the members of it command the respect of the community. In a patriarchal state of society no doubt that exists; but where a community, as we see in Europe and in the Presidency towns of India, becomes disposed to throw off the authority due to leaders and elders, and to distrust their decisions in cases affecting themselves, it is quite clear that the decision of a Punchayet can no longer have weight; for example, the Parsees in Bombay are a very able and energetic body of men, 120,000 in number, most of them being men of vigorous European dispositions, extremely difficult to govern internally; their marriage rites, successions, and ceremonies as to fire temples are continually giving rise to questions which in former times, under the old native governments, they used to settle among themselves. The Punchayet had then great authority over the lower class, but now that reverence has entirely passed away; the lower Parsees do not recognize the jurisdiction of the self-elected elders, and they have no power whatever to enforce their decrees. They have made attempts from time to time to have legal powers given them by the Government for the purpose of enforcing their decrees, but the argument which has been addressed to them, by myself among others, is, that if those decrees of the elders have not binding force by their own intrinsic validity, the Government would not give them such power, but would give it to the constituted authorities of the country, who are responsible in the ordinary way. I apprehend that the Punchayets, which are very well suited to a simple state of society, are not applicable or capable of being applied when a community is growing up more intelligent and more independent, and when they want the usual institutions of a civilized community.

2799. Does your information enable you to form an opinion, whether it would be desirable to supersede the Mofussil Courts in the Presidency of Bombay, where the Punchayet is in use, by any new form of procedure under a general code?

We have done so already. The Punchayets could be called in, and they are called in, in cases involving mercantile accounts, and so on, with great advantage.

2800. Lord *Elphinstone.*] The Punchayets were resorted to rather in the absence of regular Courts than since their establishment, were not they?

Yes.

2801. Lord *Stanley* of Alderley.] Do you think it would be feasible to give facilities for the establishment of Arbitration Courts in Bombay to regulate the affairs of the Parsees among themselves?

I think Bombay is in a state very like that of the large towns in Europe, Liverpool, and so on; it is a civilized capital; many of the natives there are equal to ourselves in intelligence and in wealth; and I do not think that arbitration is a good mode of determining disputes between such men. I would much rather have my own case decided by a Judge sitting on the bench, a Lord Mansfield or a Lord Kenyon, if the procedure is sound and simple, than by any arbitrator.

2802. You stated before, that the Parsees felt a great disinclination to have their affairs settled by a Judge according to European law; would not it be desirable, therefore, in those circumstances, to give them facilities for settling their affairs by arbitration?

I did not say that the Parsees were unwilling to submit their disputes to Courts of Law; I said they were unwilling to submit them to a Punchayet of their own. But, though the people are desirous of submitting them to the Courts of Law, the leaders among them would be very desirous of having their powers continued to them, and enforced by law.

2803. Earl *Graham.*] Have any legal powers existed of enforcing the decrees of the Punchayets?

No legal power.

2804. Lord *Stanley* of Alderley.] Is there a desire among the people for the establishment of the jury system?

We

We have one already in the Presidency. All our criminal procedure is conducted by jurors; Native jurors sit in the jury box with Europeans.

2805.* Could that system be extended more generally over India?
It is doubtful; I have seen the system in operation at Ceylon, where I have visited the Native Courts, with assiduity, and it did not answer there.

2806. *Chairman.*] Is not it in useful operation in some of the non-regulation provinces?
In Assam and Tenasserim I understand it has been tried usefully.

2807. Earl *Graham.*] Generally speaking, are not the cases which the Parsees refuse to submit to the decision of the Punchayets cases involving questions of doctrine and religion?
Yes, such as marriage cases; marriage cases, I apprehend, belong to the Courts of the country, and as such, the Supreme Court of Bombay, for example, can take cognizance of them; but the law on that point is very defective, and requires the interposition of the Legislature. It is, to this day, a question whether a Parsee may indulge in the luxury of a second wife or not. Some of the Parsees think it is right, and some think it very wrong; they themselves complain that the law is very vague. It is upon some of those points that the Parsee Punchayet has lost its influence with the people: among the majority of them, the opinion has prevailed that it is right to have but one wife, and some of the leaders having taken two, they have lost the influence which should belong to men assuming to govern the whole body.

2808. Marquess of *Salisbury.*] You say, by the Parsee law it is doubtful whether they are entitled to take two wives?
It is a doubtful point; we do not know, in fact, where the Parsee law is to be found; upon a point of this kind arising, the Judges are placed in great difficulty to know what the law is.

The Witness is directed to withdraw.

JOHN FLEMING MARTIN REID, Esquire, is called in, and examined as follows:

J. F. M. Reid, Esq.

2809. *Chairman.*] WILL you state to the Committee how long you held office in India?
For 31 years.

2810. Will you state what was the nature of the appointments you held?
I was always in the judicial department; for the last 10 years I was Judge of the Sudder Court at Calcutta; I had been, before that, for seven years Register of the Court.

2811. How long have you left India?
About six years; I left in 1847.

2812. Is your opinion favourable or unfavourable to the present state of the administration of justice in India?
I think it might be improved: it is as favourable as circumstances will admit.

2813. What are the principal points in which you think it is now deficient?
The delay is the chief defect, the great delay which occurs before a case can be decided.

2814. Is that the case in all the Courts?
I am afraid in all of them, even in the lowest Court, where justice ought to be the most summary; the time occupied is very great, and the appeals are very long.

2815. What is the average time occupied in a suit before the Moonsiff?
Generally more than a year; the causes ought certainly to be decided in much less time than that.

J. F. M. Reid, Esq.

17th March 1853.

2816. Are technicalities the cause of the delay, or the inefficiency of the Judges?
There are not many technicalities; it is a good deal owing to the people, they will not attend to their business themselves, and they have not good pleaders; and when they carry on their cases in Court themselves, they do not know how to conduct them properly.

2817. *Lord President.*] You think the delay is partly owing to the people, and not entirely owing to the constitution of the Court?
A great deal is owing to the people.

2818. Are not the forms of procedure also a great cause of the delay?
They are very simple; I do not see how they could be much more simple than they are.

2819. *Chairman.*] What is your opinion of the aptitude of the Native Judges for judicial functions?
I think they give very good decisions, generally speaking, if they make them carefully.

2820. Lord *Broughton.*] What is your opinion of their integrity?
I cannot say much for that; I think there is a great want of integrity among them, even among the very best of them.

2821. Lord *Wynford.*] It has been intimated that there are fewer appeals from the Native Courts than there are from those presided over by European Judges?
I cannot speak to the number of them; I should not have thought that that would be the case.

2822. All those are Courts of Record?
Yes.

2823. Then it would appear, by returns at the India House, what the proportion is?
Yes.

2824. Lord *Monteagle* of Brandon.] Would those returns also show the proportion of reversals and confirmations in both cases?
Yes.

2825. *Chairman.*] Is it not the case that the larger proportion of appeals from the European Judges than from the Native Judges may, in some measure, be accounted for by the fact, that before the European Judges there is a more experienced Bar, who are more likely to detect any errors in their judgments than is the case in the Courts of the Native Judges?
It may be so; and it may be the case that, in the lower Courts particularly, the suitors are not able to carry on appeals from their poverty; I am sure that many of them do not appeal, because it is so expensive.

2826. The sums being of small amount, there is a less temptation to spend large sums in appeals?
Yes; and there is an inferior order of pleaders; very probably, in some cases, if the parties had better advice they would appeal. The Vakeels in the Moonsiffs' Courts are very bad.

2827. Lord *Elphinstone.*] They are very corrupt, are not they?
Very much so; I should say, in fact, the natives themselves hardly place any confidence in them.

2828. Do you think it is an advantage that Vakeels are allowed to plead in criminal cases before the Zillah Courts?
I have hardly ever seen anything of the sort; I do not think, when I left India, it was the practice in any of the Courts for them to appear in criminal cases; in the Sudder they used to present Petitions; but I scarcely ever heard a pleader say anything in an appeal case in criminal matters.

2829. *Chairman.*] What is your opinion of the working of the jury system in India?
As a jury, I think it is quite futile; there is no jury at all. If you call them assessors, they may be very useful to sit with Judges; but if you speak of them as a jury,

J. F. M. Reid, Esq.

17th March 1853.

jury, they have no authority; they give a verdict, but the Judge is not bound by it; if the Judge convicts, though the jury acquits, the Judge must sentence; he cannot even refer to the Nizamut in a doubtful case.

2830. Does your answer apply to matters of fact, as well as of law?
Yes, everything.

2831. How are the juries composed?
I do not exactly know how they are composed; the Judges summon any respectable people in the neighbourhood; but, generally speaking, they employ as assessors the Principal Sudder Amins or Vakeels; they are sometimes called jurors, and sometimes assessors; one is equal to the other; the Judge is no more bound by the opinion of one than of the other.

2832. Lord *Stanley* of Alderley] What are their functions?
They merely sit as assessors to give their opinions. They examine the witnesses, and they may enlighten the Judge as to any of the practices of the country; they will know better how to examine a native witness than the Judge; particularly in some districts where particular customs prevail.

2833. It is a misnomer to call them juries?
Quite a misnomer.

2834. It is your opinion that there are no materials among the Native population to constitute what we should call a jury?
I should say certainly not; highly respectable Natives will not come forward; they esteem it a disgrace to come into a Court; you can only get people about the Court, Vakeels or Native agents, who are in the habit of attending the Court.

2835. Does the opinion you have expressed as to the want of integrity on the part of the Native Judges, extend generally to all the Native population, so as to render them unfit for the position both of Judges and of jurors?
It is very likely, I think, that if you raise their station, you may make them more trustworthy; but, generally speaking, there is a great laxity of morality among them, so that you cannot place implicit confidence in them.

2836. Marquess of *Salisbury*.] Must not their character be raised before they are fit for holding any of those situations?
Certainly.

2837. Earl of *Harrowby*.] Should you see any objection to a Native occasionally occupying a high judicial station, in conjunction with Europeans?
Certainly not; well looked after, they make very good Judges.

2838. It would rather contribute a useful ingredient to the judicial strength?
It is a necessary one.

2839. *Chairman*.] You said that justice was not administered as speedily as it should be; what is the obstacle to its being so?
There is immense expense incurred in stamped paper; no exhibit can be filed in a case, except in the lowest Courts of all, without a stamp; then there is the payment of subsistence of the witnesses, and different costs of the kind that run very high.

2840. Lord *Monteagle* of Brandon.] Are the stamp duties high?
I do not know what they are in reference to the English stamp duties, but they are high.

2841. Is not there the fee of a rupee necessary on preferring any complaint?
There are stamps for the most trivial complaint; a stamp of eight annas is required for common petitions; every petition to the Sudder must have a stamp of two rupees; all exhibits require to be filed with a stamp.

2842. Are there many exhibits in the course of those oriental trials?
Very many.

2843. Practically speaking, is that a considerable burden upon the suitors?
I think it is.

J. F. M. Reid, Esq.

17th March 1853.

2844. Are many of those suitors poor?

I cannot say that they are all poor; the great body of the people are litigious, so that a man's poverty does not prevent his coming into Court.

2845. Is the position of many of the suitors such as to make the amount of the stamp duty which is now leviable a considerable burden upon them?

Yes; I have often heard a man plead that he had not carried on his suit quickly enough, because he was waiting till he could raise the funds for paying for the stamps.

2846. *Lord President.*] You say that the stamp duties are not so high in the lowest Courts?

No; they are much lower in the Moonsiffs' Courts; the pleadings and such like papers, which in other Courts require stamps, are in those Courts written on plain paper.

2847. *Chairman.*] Does it ever happen that the proceedings are invalidated by reason of some error in the stamp?

Sometimes; but that is always allowed by the Court to be corrected.

2848. What is the nature of the circulars which you are in the habit of addressing to the inferior Courts from the Sudder?

They are orders issued from the Court itself; sometimes by the desire of the Government, and sometimes originating in the Court itself.

2849. What is the nature of them?

They are on all subjects.

2850. Earl of *Ellenborough.*] Do they explain the law?

Sometimes they explain the law, and sometimes they contain rules of practice.

2851. Lord *Monteagle* of Brandon.] Are they binding upon the inferior Courts to whom they are addressed?

Yes.

2852. *Chairman.*] You stated just now that the Natives were litigious; is that their general character?

It is: they will never stop when they get into Court, if they think they can have another trial.

2853. Would it be possible to diminish the number of appeals?

A man has one appeal of right, and then he has another special appeal, or appeal upon special grounds; that is taking the facts as they are stated in the decree; the appeal is upon some point of law; I do not see how there could be fewer appeals than that.

2854. Lord *Monteagle* of Brandon.] Are there many appeals upon technical grounds, as distinguished from appeals upon the merits?

Very often that is the case: many of the appeals are upon technical grounds.

2855. Do many of the decisions in the Superior Courts turn upon technical points, and not upon the merits of the case?

I should say the merits of the case are the chief thing looked to.

2856. Which are the more frequent, appeals upon the merits, or appeals upon technicalities?

I should say appeals upon the merits; I speak of the first appeal; the second appeal is merely upon some point of law; you cannot vary the facts; you must take the facts as they are stated.

2857. Earl of *Ellenborough.*] How do the members of the Sudder transact their business, and come to their decisions; does each member read the same papers, and then do they meet and decide what the opinion given shall be; or is the business divided among them, and does the body take the opinion of the individual member who has looked through the papers?

The regular appeals used to be distributed. The Register used to distribute the cases which were ready, giving to each of the Judges an equal number. Each Judge took up his own file; he read the case himself in his own Court, in the presence of the pleaders, or the parties—in open Court: if he agreed with the decision of the lower Court, he confirmed it, and the case was finished; if he did

did not agree, but wanted to alter it in any way, under the old law he recorded his opinion, and sent it on for another voice; the second Judge then took it up, reading the case all over, in the same way as the first Judge had done, and he recorded his opinion; if he agreed with the first Judge, he passed the proper order; if he did not, it went on to the third and fourth, till two Judges agreed. Two or three years before I left India, there was a law passed that if a Judge wished to alter a decision of an inferior Court, after he had read over the proceedings, he was required to call in two other Judges, and these three Judges, sitting together, decided the case, and it could not go any further.

2858. If the first Judge affirmed the decision of the Court below, he made no reference to any one else?

No; the case was decided at once.

2859. Were there any occasions on which a cause was heard, as is the case here, before all the Judges?

Yes; I have known two or three instances in which some particular matter has been brought before all the Judges, and they, sitting together, decided the case or point referred.

2860. When there is a circular order issued, do all the members of the Court meet to consider it?

Yes, they all decide upon it; at least they used to do so formerly; but latterly, the English department was placed under one Judge, and he did almost all the work of that department; he could send round, for the opinion of his brethren, any circular order that he wished to be passed: the other Judges gave their opinion upon it, he originating everything.

2861. Was it usual to differ from the Judge who had first given his opinion, or was there any feeling of courtesy which usually led the other Judges to approve of the opinion first given?

I have seen as much difference of opinion there as occurs in the English Courts: they are not bound to agree with the opinion of another Judge, as a matter of course.

2862. Marquess of *Salisbury*.] Are the fees in the different Courts very high?

The amount of the pleaders' fees is settled among themselves; the Courts never interfere as to the pleaders' fees. In 1814 there was a general rule laid down, by which, according to the value of the suit, the pleaders' fees were a certain percentage; that, however, is not the whole of the costs.

2863. That is the fee to the pleader?

Yes.

2864. Are the fees of the Court very high?

I think they are. Stamped paper is required for the filing of exhibits, and then also for giving in the names of the witnesses. The diet-money of the witnesses must be deposited: witnesses from a distance cannot be called in without their diet-money being paid.

2865. By whom is the amount of those expenses fixed?

There is always a list prepared in every district, showing how much a witness is entitled to per diem for his subsistence.

2866. By whom is that prepared?

It is prepared generally by the Judge. There is an established scale in each district, and it is never altered, unless particular circumstances call for alteration.

2867. Is there a Taxing Master in the Court?

No; the costs are drawn out from the papers, and appended to the decree.

2868. Can you state by whom the table of costs was fixed originally?

There is a list of papers put down: the first is the plaint—in a large suit, that may be 500 rupees; the next is the summons: the cost of these and subsequent papers is abstracted from the papers, and put at the foot of the decree.

2869. By whom was the amount of 500 rupees fixed?

By the Company's Regulation; Regulation I. of 1814, is the one which usually guides the Court.

J. M. P. Reid, Esq.

17th March 1853.

2870. Are you speaking of Calcutta?
Yes.

2871. Earl of *Harrowby.*] In what way is the Register now paid?
He is paid by salary.

2872. By a fixed salary?
Yes.

2873. Not by a per-centage?
No; by a regular salary; just as any other of the civil servants are paid.

2874. Marquess of *Salisbury.*] Was it paid by the Company?
Yes.

2875. Earl of *Ellenborough.*] You had no money in your hand as Register, had you?
I had a treasurer, who kept an account. I kept no large amount of money in my own Court, probably not above 2,000 rupees. It was all made over to the sub-treasurer.

2876. Was the sub-treasurer a European?
Yes.

2877. Marquess of *Salisbury.*] To what account was that carried; to the account of the Government?
The stamps would be carried to the account of the Government in the Stamp Department. The pleaders' fees went to the pleaders.

2878. To what account were the fees of the Court carried?
They were all expended. The only thing carried to the credit of the Government was the stamped paper; the fee of the peon was paid to the peon who served the summons.

2879. In the case of the Registers' fees, to what account were they carried?
To the Judicial Department, just as the salaries of the Judges were. My salary did not depend upon the amount of fees.

2880. Were not fees taken from the suitors?
The only fee taken from the suitors for the Government was the stamp.

2881. Lord *Monteagle* of Brandon.] Are you able to state from your recollection whether you have known any cases in which the amount of the expenses has borne a very considerable proportion to the subject-matter of the suit?
I cannot give an opinion upon that subject: as Register, I had not much to do in looking after that matter; the pleaders rather looked to that; they only brought the thing forward in case of any error.

2882. The question has no reference to any supposed illegitimate charge of fees: the question is, have you known instances in which the legitimate charges of the suit bore a very considerable proportion to the value of the property which was contested?
I do not think I can give a satisfactory answer to that question.

2883. Lord *Stanley* of Alderley.] Have you never heard that in the Court of Chancery the expense of litigation has sometimes been much greater than the sum recovered?
I cannot say that I know any case of that kind.

2884. Lord *Elphinstone.*] Do you know what proportion the expenses in the Supreme Court bear to the expenses in the Sudder?
I cannot go into detail; but I have always heard people say the costs are much larger in the Supreme Court.

2885. *Lord President.*] Are the Committee to understand from you that in all cases, however important the cause may be, and however large the amount at issue, the first Judge, if he agrees that the decision of the lower Court, records the decision of the Sudder Court as a whole, without consulting any of his brethren?
Yes.

2886. The appeal to the Sudder, therefore, if it is followed by an affirmance, is an appeal to a single Judge?
Yes.

2887. Who is under no necessity, and is not in the habit of consulting his colleagues?
He is under no necessity to do so; sometimes he does.

2888. *Chairman.*] Will you be good enough, in order to illustrate the mode in which judicial officers are trained and appointed, to state where you yourself were educated?
When I entered the service I first entered it as Assistant.

2889. Were you at Haileybury?
Yes, I was at Haileybury for two years.

2890. Will you state what the course of education there was as regarded legal instruction?
It was very loose; there was no rigid examination on leaving college: you cannot compare what it was then with what it is now; it was indeed the same sort of education that is given now. The classics were kept up, and mathematics, law, political economy, and history, and then there was a smattering of languages; that was the course of education.

2891. How far were the classes of law carried on in detail; were there lectures upon jurisprudence given?
Twice a week there was a lecture: Mr. Christian was then the Professor. He pointed out matters for our study; we were instructed upon different points in the lecture-room, and then we had to read it up in our own rooms.

2892. Lord *Monteagle* of Brandon.] Was it optional to attend those law lectures?
We were required to attend every lecture.

2893. *Chairman.*] There was no examination upon your quitting Haileybury?
There was a sort of examination, and prizes were given; but there was no examination at which you could be plucked, and turned back again for another year.

2894. What was your appointment upon arriving in India?
I was in the college for about eight months; after that I went up the country as an Assistant to the Magistrates. I was there for a very short time, and then I was made Register of the Provincial Court, which is rather a higher office.

2895. Lord *Wharncliffe.*] When you say you were an Assistant to the Magistrates, was it within the Regulation Provinces?
It was.

2896. *Chairman.*] How long were you in the office of Register to the Provincial Court?
About a year.

2897. During that time what were your functions?
I had to take care that the cases were properly brought up; to look to the preparation of the cases, and see that they were properly prepared to lay before the Judges; I conducted the English correspondence, and prepared all the returns to be made to the Sudder and to the Government.

2898. Did any cases of minor importance fall to you to decide?
No; in that appointment I had no decisions to give; I had a good deal of translation; I had to translate papers, and prepare abstracts for the Judges.

2899. Does that appointment exist now?
No.

2900. What was your next appointment?
I was next Register of the Zillah or the District Court, and Assistant to the Magistrate. As Register of the Zillah Court I was a Civil Judge, and tried cases up to 300 rupees. After a little time, when I had obtained experience, in about two or three years, I had extra powers given to me to try cases up to 1,000 rupees.

M. Reid, Esq.

March 1853.

2901. Were those extra powers given you at the discretion of the Court?
On the report of the Judge, my superior: I was under a European Judge; he reported me to the Sudder Court, and they recommended to the Government to give me those powers.

2902. How long were you in that situation?
About four years.

2903. What was your next step?
I then came down to the Lower Provinces, and held the same situation there for about a year; after that I entered the Sudder as First Assistant to the Register. That is not the usual line which a young man would take; I was considered very lucky in getting into the Sudder Court. A Register who did not get into the Sudder Court would have gone on in those days acting as Register. When a Register had sufficient knowledge to have extra powers in civil matters, he generally got extra powers in criminal matters too; so that he acted in a higher capacity both as a Civil and a Criminal Judge. After that, he might be sent out as joint Magistrate to a separate station in the district having a small amount of original jurisdiction: then he would work on in that way till he became a Judge and Magistrate. That was the system when I first entered the service, and that was the state of things till about 1829, when Lord William Bentinck was in India.

2904. Will you state what was the nature of the change which he made?
He abolished the Registerships, and brought in the Principal Sudder Amins and the native agency, which is now subsisting.

2905. Do you consider that that change was advantageous or not?
I thought the old plan was a much better plan; it afforded the means of much better teaching than can be obtained now.

2906. For what reason?
At present there is no way of training a Judge; his only training is derived from the knowledge which he obtains in the Collectors' offices, and in the magisterial offices. As a Civil Judge a man may now be placed upon the bench who has never decided a single civil suit in his life.

2907. *Lord President.*] Or seen one decided?
Or seen one decided.

2908. Is it the fact that by performing the duties of a Collector and other civil offices in India, a man may obtain considerable experience in judicial or *quasi* judicial matters?
No doubt of it; the Collectors have a good deal to decide; they have to decide upon revenue cases involving questions of tenure; some of the most difficult questions in the world come before them.

2909. Which they decide personally?
Yes; they are summary decisions, but all their decisions may be appealed to the regular Civil Courts.

2910. *Chairman.*] Was the object of the change introduced by Lord William Bentinck to employ an increased number of Natives in the judicial offices?
Yes; I believe that was the chief reason.

2911. Do you think that is desirable?
It is desirable, because we cannot get Europeans for the purpose. If we could get a sufficient number of Europeans, I would much rather employ them than the Natives.

2912. *Lord President.*] Did you say that the decisions of the revenue officers were matters of appeal to the regular tribunals?
Yes, as regular suits: we divide the suits in India into summary suits and regular suits.

2913. If any one feels himself aggrieved by the decision of a Collector, he may institute a regular suit before a civil tribunal?
He institutes a suit against the Collector, or rather against the Government, as represented by the Collector.

2914. *Chairman.*] Have you ever known any instance of the Government

J. F. M. Reid, Esq.

17th March 1853.

interfering with a Judge when there was a case pending between a Native and a Collector?
I was never in the Revenue Department myself.

2915. Have you ever become acquainted with any instance of the Government interfering with a Judge in deciding a case between a Native and a Collector?
No, I never heard of anything of the kind.

2916. Lord *Stanley* of Alderley.] Do you think it would be expedient to employ the Natives in higher judicial offices than they now fill?
When they become fit for it, I think they might be more extensively employed.

2917. *Chairman.*] How would you employ them?
I think they must improve themselves in point of morals before you can do them much good; education is being tried; but how are you to educate grown-up men? You may educate the boys and the young men who come to the schools and colleges, but not those who are grown up.

2918. Earl of *Ellenborough.*] Do you think the morals of the educated boys, when they grow up, are better than those of the men who have not had education?
I do not think they are much in Calcutta.

2919. Lord *Stanley* of Alderley.] Is the education which you speak of a moral education, rather than an endeavour to promote their intellectual acquirements?
I was for some time a member of the Scotch General Assembly's College; there they read what ought to give them a good moral education, but they do not seem to be much benefited by it.

2920. Do you think the intellectual cultivation that the Natives have received has improved their moral character?
I do not think so.

2921. *Lord President.*] Do you agree in the opinion which has been expressed by a former witness, that there is a great want of the means of judicial training in India, and a very insufficient preparation for the judicial office?
I am strongly of that opinion.

2922. Do you think that that deficiency exists to such an extent as to have a very injurious effect upon the administration of justice?
The administration of justice is very simple in India under the Government regulations: the Judges might be better educated; but the plan goes on very well as it is.

2923. Lord *Elphinstone.*] Are not the judicial arrears much less now than they were before the introduction of the Native Judges?
They are much less.

2924. Earl of *Harrowby.*] There has been a great increase in the number of Judges, has not there?
Yes, and a large increase of appeals at the same time.

2925. *Chairman.*] Upon the whole, has not the character of the Native Judges considerably improved of late years?
I think it has; they are in a better situation than they used to be generally.

2926. Lord *Elphinstone.*] Do not you think that raising the pay of the Moonsiffs would tend to improve their trustworthiness?
I am not prepared to say that.

2927. Earl of *Ellenborough.*] From what class are the Moonsiffs taken?
They are generally taken from the officers of the Court; they are people bred up in that employment.

2928. From what class are the officers of the Court taken?
Not a very high class; I should say from the middling class of men.

2929. What are their relations; are they small cultivators or bunyers?
They are of the shopkeeper cast in a great many instances.

2930. Marquess of *Tweeddale.*] Do you think that the Native suitors would prefer Native or European Judges?

I think

M Reid, Esq

March 1853.

I think they prefer European decisions; a man is never satisfied till he has a European decision at last.

2931. Lord *Wharncliffe.*] You said, a short time since, that you thought the abolition of the office of Register had removed the only means that a man had of obtaining a knowledge of legal proceedings in the Company's Courts?

Yes; I do not see how he is to obtain such a knowledge now, unless by picking it up as well as he can in the Collectors' Courts, and from what he sees of judicial cases.

2932. As you have had experience of both systems, are you able to say whether the consequence of the change which has been made has been to lower the qualifications of the Judges in the Mofussil Courts?

I think they would have been much better if they had gone through the education for which the former system gave opportunities.

2933. That is to say, the Judges, you think, are not now so fit for their offices as they were when the office of Register existed?

Certainly not, in the judicial branch of the service

2934. Lord *Elphinstone.*] Would it be possible to provide for them any judicial training in this country before they go out to India?

I cannot answer that question; I do not know what facilities might be given for it.

2935. *Chairman.*] What would be the system which you would recommend; would you recommend a recurrence to the former system of Register and Assistant Register?

It seems to me that it acted very well; I should recommend that there should be some opportunity given to a young man to do what he would have to do afterwards when more advanced in the service.

2936. Lord *Stanley* of Alderley.] Does not the increased employment of Natives in the Courts preclude Europeans from having that opportunity of education in the earlier part of their profession which they had formerly?

They have none of those cases to decide which they formerly had; the petty cases which used to go before the Register now go before the Moonsiffs.

2937. That is in consequence of the increased employment of Natives in those Courts?

Yes.

2938. Lord *Monteagle* of Brandon.] Have you known cases occur in India in which individuals in the civil service, after having been many years in the Revenue Department, have been transferred to the judicial service?

Yes; I recollect one very striking instance, in the case of Mr. Tucker, one of the Company's Judges of the Sudder; he was one of the best Judges we had; till he came into the Sudder he had almost always been a Collector.

2939. Does that single instance lead you to approve of the principle of an interchange of service between the Revenue and the Judicial Departments?

Yes, I think it would be a great improvement; a man never can be a really good Civil Judge unless he has had some experience as a Collector. I have often experienced great difficulty in consequence of not having been a Collector, and therefore not being sufficiently acquainted with those questions of tenures which come before the Collector: if you could make a man pass from the Registership to the Collectorship, and then come up to be a Judge, it would be a great advantage.

2940. Lord *Wharncliffe.*] Would it be a good system to require, at a certain period of a man's career, that he should determine whether he would attach himself to the Judicial Department or not, and then require him to go through some examination, and from thenceforward to remain attached to the Judicial Department?

I should think mixing the two departments would be better.

2941. Have not you just said that you think it rarely happens that you can obtain

obtain a good Judge by appointing a man who has not had any experience as a Collector?

The branches in those days were considered separate.

2942. That is not so now?

No.

2943. Earl of *Ellenborough.*] In what year was Mr. Tucker appointed?

In the year 1837 or 1838.

2944. *Chairman.*] Have you found any difficulties in administering the law arising from the state of the law itself?

No; the only law we had to administer was laid down in the regulations.

2945. Earl of *Harrowby.*] Had you no other authority than the regulations to look to?

The Mahomedan law was obtained by questions put to the Mahomedan law officers, and the Hindoo law by questions put to the Hindoo law officers.

2946. Your three authorities were, the Regulations, the Hindoo law ascertained from Hindoo officers, and the Mahomedan law ascertained by reference to Mahomedan officers?

Yes.

2947. Have you found any difficulty in the application of those various laws?

No, I do not think there was any difficulty; we were always assisted by the pleaders on both sides. There was one man on each side ready to point out any error which one might fall into.

2948. How did you proceed in cases where the plaintiff and the defendant were of a different faith?

You would proceed by the law of the defendant.

2949. In all cases?

In all cases.

2950. Both civil and criminal?

Only in civil cases; in criminal cases the Mussulman law was the principal law.

2951. Does the Mahomedan law, as altered by the regulations, differ very much from the English law?

It is chiefly in criminal cases that we require to refer to the Mahomedan law, merely as to whether the case is proved or not, and if proved, what is the legal punishment; that is the only way in which, in criminal cases, we employ the Mahomedan law as modified by the regulations.

2952. Earl of *Ellenborough.*] If a man were tried criminally, and there were reason to suppose that he had been guilty of murder, if the body of the person supposed to be murdered was not discovered, you would ask the Mahomedan officer what was to be done with him, would not you?

When the case was completed, you would say to him, you have heard all the evidence; now give your opinion upon it: he would give an opinion in writing.

2953. What would be the punishment in such a case?

He would give an opinion according to the Mahomedan law; I think he would say you could not convict.

2954. Is not the punishment, where there is a strong case of suspicion, perpetual imprisonment till the body is discovered?

It would depend upon the evidence.

2955. If the suspicion were strong that there has been a murder committed by that person, if the body be not produced, is not the punishment imprisonment till the body is produced?

Not by our laws; you could not pass any such sentence; you must sentence to a specific penalty; it may be imprisonment for life.

2956. Is the law different in the Upper Provinces?

No; it is the same law, I believe.

J. F. M. Reid, Esq.

17th March 1853.

2957. Lord *Monteagle* of Brandon.] What law should you have to administer if the parties were Armenian or Native Christians?

In criminal matters, the Mahomedan law.

2958. Earl of *Harrowby.*] Did you find much inconvenience from the want of a code in the administration of the law?

The law was scattered through such an immense number of regulations, that it would have been a very convenient thing to have had one.

2959. Would it be of equal importance to have a code of procedure, as for the enactment of penalties?

For procedure, I think it would be a very great advantage.

2960. Marquess of *Salisbury.*] Would the Mahomedan law officer give his opinion upon the fact, as well as upon the law of the case upon which he was consulted?

Yes.

2961. *Chairman.*] Are there persons in this country who would be capable of drafting such a code as you refer to?

I think all matters of detail in that respect should originate in India, and be reported home, if necessary, if you will not allow in India the Governor-general at once to pass the law; but I think it would be much better done by people upon the spot.

2962. Lord *Stanley* of Alderley.] Have you any knowledge of what was done respecting the code prepared by Mr. Macaulay and Mr. Bethune?

Mr. Macaulay's Code was circulated for opinions: many regulations were passed by the Legislative Council, but whether founded on that code, I do not know.

2963. *Chairman.*] Do you think the Government at Calcutta is in the habit of sufficiently consulting the Courts as to legislative questions?

Sometimes they used to consult us, but not very often.

2964. Do you think it desirable that they should do so more frequently?

I think the heads of departments should be consulted in all matters relating to their own department.

2965. Lord *Elphinstone.*] In your opinion, would it be desirable to have the Judges of the Sudder and the Judges of the Supreme Court in the Legislative Council?

Yes, I think that would be an improvement; it would be useful at least.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to To-morrow,
Two o'clock.

Die Veneris, 18° *Martii* 1853.

LORDS PRESENT:

The Lord President.
The Lord Privy Seal.
Earl Graham.
Earl of Harrowby.
Earl of Ellenborough.
Viscount Gough.
Lord Elphinstone.
Lord Mont-Eagle.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Glenelg.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

J. P. Willoughby, Esq.,

18th March 1853.

JOHN POLLARD WILLOUGHBY, Esquire, is called in, and examined as follows:

2966. *Chairman.*] WILL you be so good as to state what part of India you served in?
Entirely in the Bombay Presidency.

2967. What was the nature of your services?
I was exclusively employed in the Political Department until I was, in October 1829, selected by Sir John Malcolm to officiate as Secretary to Government.

2968. During how long a time did you occupy the last office?
Until I returned again to the Political Department; I can mention the dates if the Committee desire it; I arrived in India on the 10th February 1819, and soon after my arrival was appointed to a situation in the Political Department (which bears some resemblance, I believe, to the Diplomatic Department at Baroda). From November 1829 to March 1831 I officiated as Secretary to the Government in the Judicial and General Departments. I was then appointed Political Agent in Kattywar, and remained there, with an interval of 10 months, employed on special duty at Ahmedabad, till November 1835, when I was appointed Secretary to the Government in the Political, Secret and Judicial Departments. I remained in that office until April 1846, when I became a member of the Government, and continued in that office the usual period of five years, when I retired from the service, and returned to England, after an absence, without furlough, of upwards of 32 years.

2969. Will you state generally to the Committee what is your opinion of the efficiency of the administration of justice in that Province?
I beg, in the first place, to explain, that I have never served in what are called the Regulation Districts, as distinguished from the Non-regulation Districts. The territory in which I was employed entirely belonged either to the Native States, or to tributary Chiefs more or less dependent on the British Government.

2970. As Secretary to the Judicial Department, had you not some opportunities of obtaining a knowledge of the judicial system of that Province?
I had, but not of that nature which an officer would derive from acting as Judge; as an executive officer exercising judicial functions, I have scarcely had any opportunity of observing the working of the judicial administration. In that

J. P. Willoughby, Esq.

18th March 1853.

branch I am deficient in practical experience, which must necessarily detract from the value of my evidence.

2971. What portion of the judicial business came before you?

The Government exercises no control whatever over the judicial authorities in the exercise of their judicial functions, strictly so called. The Government, and its servants, in fact, are liable to be sued in the Company's and the Queen's Courts of Law, and exercise no control whatever over the Judges. In that capacity they are most properly only subject to the check and revision of Appellate Courts It has the power, however, of calling for the proceedings of any Court of Justice, from the highest to the lowest, and exercises the prerogative of mercy when required. Periodical reports are made to them by the Sudder Dewanee and Sudder Foujdaree Adawlut of the civil and criminal business performed throughout the Presidency: reports on the police, the management of gaols, and on many other miscellaneous matters, are likewise made to Government. All these came under my observation as Judicial Secretary; I held that office from 1835 to 1843, when, in consequence of a large increase of my duties as Secretary in the Political and Secret Departments, a new arrangement was made in the Secretariat of Bombay, which relieved me from the charge of the Judicial Department. Afterwards, when I became a member of Council, I was *ex officio* Chief Judge of the Sudder Adawlut for about two years and a half.

2972. From the opportunities you had of examining the reports to which you have alluded, what is your opinion of the efficiency of the civil and criminal judicature in the Bombay Presidency?

My own opinion is, that the judicial system we have adopted is far too complex and too cumbrous, and not sufficiently summary in minor cases for many parts of India; and that, taken as a whole, it has been—for reasons that admit probably of explanation—the least successful part of our administration.

2973. Do you consider that justice is not administered in as cheap and speedy a way as possible?

Certainly not, as compared with the system pursued in the Non-regulation Provinces: I think, however, that, as compared with the administration of justice in Her Majesty's Courts, though it is undoubtedly not so good professionally, it is not nearly so costly in the Company's Courts.

2974. When you say not "so good professionally," what do you mean?

I mean that the law administered is not so well administered in the Company's Courts as in Her Majesty's Courts, because there is no doubt that there are great defects in the way in which the Company's Judges are appointed, and that there is now no school for their efficient training and instruction,

2975. We have heard how the Judges, both Native and European, are appointed: is it your opinion that that is the best mode of appointing them, or would you suggest any improvement with regard to the appointment of Judges, both Native and European?

I think that greater attention should be paid in the selection of Judges, and in qualifying persons intended for the Judicial Department, both at home and in India. In my time, which was 35 years ago, very little attention was paid by the students at Haileybury, generally, to acquiring that knowledge of the principles of law and jurisprudence, the law of evidence, and so forth, which is desirable, if not essential, in one who is to exercise judicial functions; I think greater attention might be directed to those subjects at that seminary in the first instance, and that in India, those who enter the judicial branch of the service should be subjected to some examination or test of their qualifications.

2976. Lord *Monteagle* of Brandon.] At what time did you leave Haileybury?

I left in July 1818.

2977. Who was the Professor of Law at that time?

In the first instance Professor Christian, and then the late Sir James Mackintosh.

2978. That was soon after Sir James's appointment?

It was: I only attended his lectures half a year, or during one term.

2979. *Chairman.*] Are you of opinion that it is the best system of preparation for

J. P. Willoughby, Esq.

18th March 1853.

for the Indian civil servants, that they should be educated in a separate educational establishment in this country?

As far as I am able to form an opinion upon that subject (for I have been absent from England for upwards of 32 years), I think there are considerable advantages in having a separate institution for educating youths intended for India; and that there is no other place where, take it all in all, so much and varied knowledge could, if a student is industrious, be acquired in the very limited period allowed.

2980. Then what are the improvements in the system now adopted at Haileybury, which you would suggest, with a view of raising the judicial qualifications of the civil servants?

I would make the course of Law Lectures include, not only the elements of English Law, but also the elements of Hindoo and Mahomedan Law, and also the Local Laws of the country, which are all now printed in volumes, namely, the Regulations and Acts of the Governments of India.

2981. Would you lengthen the period during which the students are kept at Haileybury?

I do not think I would.

2982. Earl of *Harrowby*.] Would you make them frequent the English Courts, for the purpose of seeing the law in practice before they left this country?

No doubt some advantage would be derived from that; but my impression is, that although the great principles of English Law are applicable, probably, all over the world, the system under which it is administered in England is in many respects not applicable or suitable to India.

2983. Lord *Monteagle* of Brandon.] Should you think it advisable that, in the Haileybury course of instruction, a less amount of time should be occupied in the attempt made at present to teach the Oriental languages, and that a greater portion of time should be devoted to Law, to Political Economy, to History, and to matters of Science?

Most undoubtedly.

2984. Do you consider that the teaching of the Oriental languages at Haileybury, and, above all, the devotion of time to Sanscrit, produces results which are of much practical importance to a young writer when he gets over to Calcutta?

My opinion is, that the time now devoted to Oriental literature in this country might be far better and more advantageously devoted to other branches which cannot be so well acquired in India. As a matter of course, if the student can acquire a knowledge of Sanscrit and the elements of different Oriental languages at Haileybury, he gains so much in addition; but my opinion is, that he cannot acquire a knowledge of everything, and that therefore his attention ought to be directed to those branches which are most important.

2985. The Haileybury course includes Persian and Arabic?

Yes.

2986. Are not those two languages becoming of less and less importance in India?

Certainly, on the Western side of India, with the exception of two or three appointments; for instance, there is the Resident and his Assistant in the Persian Gulf: a knowledge of Persian is also of use in the recently acquired Province of Scinde; in other parts of the Bombay Presidency the Persian is not used.

2987. Has it not ceased to be the official language, to a very great extent?

Yes; it has ceased to be so entirely. The vernacular languages of the country are those in which all public business is transacted.

2988. Earl of *Ellenborough*.] Must you not have a knowledge of Persian in the Political Department?

I never found it necessary.

2989. Are not many letters written in Persian?

Perhaps half a dozen letters may be received in the course of a year.

J. P. *Willoughby*, Esq.

18th March 1853.

2990. There must be somebody to understand those?

Yes; but it is not like the Court of Hyderabad in the Nizam's territory, where Persian is the language of the Court; but wherever I have been I have not found Persian necessary; and this remark applies to almost every Court or State under the Bombay Presidency.

2991. Earl of *Harrowby*.] You can, of course, have a Persian interpreter to meet the rare occasions upon which Persian is required?

There is always some person on the establishment who is acquainted with the language.

2992. But it does not follow that every person going to India should learn Persian because a Persian interpreter is occasionally required?

I certainly think not; of course a knowledge of Persian is *per se* good as an accomplishment. It seems to me that the system at Haileybury is too much one of compulsion; a student must learn such and such languages; now there may be a few who possess a natural taste for languages, and I should encourage such students to the utmost of their bent; but to make the whole College consume their time in studying languages which do not come into practical use afterwards seems to me to be wrong; to be in fact time thrown away, or, at all events, time which might be far more usefully employed.

2993. *Chairman*.] Do you think it important that young men should arrive in India at the very early period at which they now do?

I think it is advantageous that young men should arrive in India at about the age at which they now arrive, that is, about 21 or 22.

2994. You do not think it desirable that a young man should be further advanced in life in England before he comes into contact with the natives?

I think that would tell both ways; on the one hand, he would gain greater experience in this country; on the other hand, his feelings and attachments would be more formed, and he would not settle down so well in the new and strange country in which his career is opened to him.

2995. Do not you think that if the civil servants went out to India older, it would be more difficult for them to acquire a knowledge of the languages which they have to acquire upon the spot, and that it would also be less easy for them to acquire an accurate knowledge of the natives themselves; is it not in youth that that sort of knowledge is most easily obtained?

I do not think that would be likely to be the effect; if, for the sake of example, the age of 25 was fixed, I do not think it would be more difficult for a man to qualify himself in the languages, or to become acquainted with the natives, at that age than at 22.

2996. Earl of *Harrowby*.] Do you think that at that increased age they would adapt themselves as easily to the habits and manners of the people?

No; I think, if you increase the age, the person is not likely to settle down so well, and to become engrossed in, and ultimately attached to the new country as he is if he leaves this country at an earlier age.

2997. You think it very important that young Englishmen going out should identify themselves, as far as possible, with Indian interests?

That is the great point, and that perhaps is one of the principal causes of whatever success in the administration may be boasted of; in fact, the public servants who are now sent to India constitute almost a distinct profession, and identify themselves completely with the country and with the people, that is, the good portion of them; I do not assert that there are not exceptions.

2998. *Chairman*.] On arriving in the country, what do you consider would be the best preparation for acting in future as a Judge?

My idea is, that Mr. Elphinstone's plan, making it imperative that every young civilian should commence his career in the service in the Revenue Department, is the best; but I do not think the period allowed is long enough.

2999. How long would you retain him in the Collector's Department?

The idea that has occurred to me is, that every civilian should, on his first arrival in the country, commence in the Revenue Department, where I think a greater knowledge of the people, and their customs, manners, feelings and prejudices,

J. P. Willoughby, Esq.

18th March 1853.

judices, and also of magisterial and police duties, is acquired better than in any other; I would keep them in that department, if the exigencies of the service would admit of it, for at least five years.

3000. And what then?

Then I would call upon them to decide which line they would select, or decide for them; the Government must of course be able to command the services of its servants wherever they can be most usefully employed. I would give them the option of selecting which line they would prefer, the revenue or the judicial line; and before their admission to the judicial line, I should subject them to a certain prescribed test or examination, to ascertain their qualifications for judicial employ; by this mode that constant changing and shifting from one appointment to another, and from one line to another, which now takes place, and which I think is very destructive of efficiency, and detrimental to the public interests, would be obviated.

3001. Earl of *Ellenborough*.] Did you ever make any suggestion to that effect when you were Judicial Secretary to the Government?

In the Bombay Presidency, I believe, the judicial line has always been kept more distinct than in the other Presidencies.

3002. Did you ever make the suggestion which you have just mentioned while you were in office there?

I do not think I did; but it is a suggestion that I should hardly have been warranted in making.

3003. Why not?

Because it appears to be a measure which should have emanated from the Governor in Council, and not from the Secretary, unless called upon.

3004. Is the Secretary never in the habit of offering any suggestions with respect to the better conduct of his own department?

No doubt frequently he does.

3005. Is there any objection to his making a suggestion of that importance?

It depends very much upon the trust and confidence reposed in him by the head of the Government.

3006. Earl of *Harrowby*.] Do you mean according to whether such suggestions are encouraged or not?

Yes; I do not, however, wish it to be understood that during the long period I was Secretary, I was not encouraged to make suggestions as to every department that came under my charge.

3007. Earl of *Ellenborough*.] The question had reference particularly to the Judicial Department?

I do not mean to say that I have not made suggestions in the Judicial Department; the contrary is the case; but I did not make the particular suggestion alluded to.

3008. Was not that a most important matter, going to the root of the whole system?

It is no doubt a very important matter; but, as I have already stated, I believe the two lines, the revenue and the judicial, are kept much more distinct under the Bombay Presidency than they are in other parts of India; I have, however, personal acquaintance with one side of India only.

3009. Lord *Monteagle* of Brandon.] I understand you to say that shiftings and variations of office are less prevalent in the Bombay Presidency than elsewhere?

I think so.

3010. Therefore a suggestion upon the subject was much less required at your hands in Bombay than in other parts of India where the practice prevails more extensively?

Probably it was; I do not think that it was an imperative duty to make such a suggestion; it is not, generally speaking, the duty or the custom for the Secretaries to initiate important changes in the existing system, unless he has been expressly called upon by the Government to do so.

J. P. Willoughby, Esq.

18th March 1853.

3011. Earl of *Ellenborough.*] Did not all the appointments come before you in passing through your office?

Yes, but I had seldom any voice in them; in the Judicial Department, appointments by the Governor in Council are announced in the Gazette by the Judicial Secretary, in the same manner as is customary in all the other departments.

3012. Lord *Monteagle* of Brandon.] Is it usual for persons undertaking judicial functions in India for the first time, to undertake them at an early period of life?

At the Bombay Presidency there is this advantage: we have still the grade of Assistant Judges, who, after many years' service, rise to the Bench to be Judges; I believe that grade has been abolished in the other Presidencies; that, of course, gives a certain degree of training, which is very advantageous. Nevertheless I do not think myself that we have Judges in the present day (I am speaking only about the Bombay side) equal to those that existed when I first entered the service, and for this reason: in 1830 all original jurisdiction, with a very few exceptions, was taken from the covenanted, that is, the European, branch of the service, and was transferred to the natives; the effect of this measure was to destroy the school in which our former Judges were trained and acquired experience; for the consequence has been that our present Judges, both the Assistant Judges and the Judges, commence the exercise of appellate jurisdiction without having gone through the training which dispensing justice in the first instance gives, and which is the best school, I presume, that can be had. I have some recollection that this consequence was some years ago represented in strong terms to Government by the Judges of the Sudder Court.

3013. Earl of *Ellenborough.*] At what period in the year 1830 was that change made?

The Bombay Government had then the power of legislation, and the law was passed on the 27th of January 1830. The fact is, the merit of that great change is due to the late Sir John Malcolm.

3014. *Chairman.*] Is it not very difficult to combine the two objects of employing the Natives in judicial functions, leaving them only to be superintended by Europeans, and of giving opportunities to Europeans of exercising primary jurisdiction before they exercise appellate jurisdiction?

It is exceedingly difficult, and a great evil has ensued from a measure which is in the abstract excellent.

3015. What middle course would you recommend?

I have not thought much upon this subject. The only mode which occurs to me, speaking unpremeditatedly, is, that a certain portion of original jurisdiction should be re-transferred to the European portion of the judicial administration; but, on other grounds, I am not an advocate for a modification of this nature.

3016. You stated, that during the first five years you would put the writer into the revenue appointment, and that you would examine him at the end of those five years by some suitable test as to his fitness to go into the judicial office; during those five years what opportunities would he have of preparing himself for that examination?

A young man would probably make up his mind, on entering the service, which line he would select of the two, because the power of selection would be given to him if there was no public objection. Then he would prepare himself, not only by books but also by making himself acquainted with the judicial system; he would, moreover, to some extent, have the means of practically obtaining information, because the Revenue Courts, as they are designated, are administered by the Revenue Department; and he would have opportunities of frequenting those Courts and seeing how justice was administered in them; and probably, after the expiration of a portion of the five years, he would have suits of a small amount referred to him by the Collector; he would also acquire some knowledge of magisterial duties, and be employed in the preparation and adjudication of minor criminal cases, all his acts being subject to the revision of the Collector and Magistrates.

3017. Lord *Monteagle* of Brandon.] The Collector has the power of referring small suits to another party?

Yes; by Regulation VI. of 1830, a Collector or Sub-collector may refer certain

suits

J. P. Willoughby,
Esq.

18th March 1853.

suits to their Assistants and Komavishdars when the matter at issue does not exceed 500 rupees, an appeal being allowed to the Collector. By the same regulation an appeal from the Collector's decision was transferred from the Zillah Judge to the Sudder Dewanee Adawlut,

3018. Would he have any opportunity of witnessing the exercise of the jurisdiction which he was himself subsequently to carry out?
He would to some extent.

3019. He would see the very Courts in action?
Yes, he would; for if a young man was desirous of qualifying himself, he could occasionally visit the Zillah Courts. It is, moreover, the practice under the Bombay Presidency, to place Assistant Collectors, when considered qualified, in charge of one or more districts, subject to the general control and supervision of the Collector. He is stationed constantly in his districts during eight months in the year, residing at the Sudder station during the monsoon. This charge brings him much into contact with the people, and enables him to acquire a great deal of information which is useful.

3020. Are they held in the same places where the Collector's offices are?
Generally in the same places. The Collector's Kutcherry and the Adawlut are almost invariably at the same station.

3021. Earl of *Ellenborough*.] Are the advantages in the two departments equal in respect of promotion and salary?
That is the great difficulty, if the interests of the servants of the Government are to be considered. That is in my mind the only practical difficulty with regard to a complete separation between the Revenue and the Judicial Departments, because, if that were done, then A, who entered the service on the same day with B, might, in regard to promotion and consequent emolument, be three or four times superior to B, who had selected the other department.

3022. Which of the two is the best; is there any material difference between the two?
I do not think the difference would operate prejudicially as between the classes of Collectors and Judges; but under the separation proposed, one of two civil servants would acquire either a Collectorate or a Judgeship at a much earlier or later period than the other; they would not, as at present, go on *pari passu* nearly together; they would reach what is the object of ambition, the head office, in the one much before the other.

3023. In which line would they reach it first?
There can be no doubt that promotion in the Judicial line would be more rapid; and for this reason, there will only be a very limited number of Judicial Assistants compared with the number of Revenue Assistants. If the Assistant Judge were to rise in his line to be a Judge, he would, I think, reach that office much sooner than the Assistant Collector would reach the head of that office. There is only one Assistant to each Judge; whereas to each Collector there are two or three, or even four.

3024. Earl of *Harrowby*.] Would a seat in the Council be open to both equally?
Yes, because that high position is rarely attained before from 28 to 30 years' actual service, and is one of selection.

3025. Lord *Elphinstone*.] Would not the promotion in either line depend, after all, upon a great number of contingent circumstances, just as it is in the army; where, if two young officers are appointed upon the same day to different regiments, one of them may get the command much sooner than the other?
That hardly applies to this case; because, suppose the case of two youths proceeding to Bombay this year, and that after five years' employment in the Revenue line, one of them is appointed to the Judicial line, and the other remains permanently in the Revenue Department. The Judicial servant would be, say, one of seven Assistants, the Revenue servant one, perhaps, of forty; and as the number of Judges and Collectors are nearly equal, the chances of promotion would of course be nearly five-fold in favour of the Judicial Department, if kept entirely distinct from the Revenue Department. This would be the effect of the separation at the Bombay Presidency.

P. Willoughby, Esq.

th March 1853.

3026. Why should there be so many more in that line?

Because in Bombay we have three or four Assistants to each Collector. I beg to say, however, that although I have thrown out the idea of a complete separation of the two departments for consideration, it is not well matured, because I have not considered all the difficulties which may be encountered in carrying it into practice. I did not expect to be examined on the Judicial system of British India.

3027. *Chairman.*] Supposing that plan were adopted, and it was found practically that the Judicial service was more liable to lead to rapid promotion than the Revenue service, the natural effect of which would be, that young men would consider it a prize to pass the examination which would fit them for the Judicial service; would not then the result be, that the best men would go into the Judicial service?

That no doubt would be one effect of the arrangement.

3028. Would that be a useful result, in your judgment?

My opinion is that the public service should be considered first, and the servants afterwards; and, therefore, although I can easily foresee that under the system of a seniority service, which has so long existed in India, dissatisfaction would be felt by a person who saw his junior pass by him, I should not think that was an objection which should over-rule all other considerations.

3029. Lord *Monteagle* of Brandon.] When you stated, in an earlier part of your examination, that one effect of the appointment of Natives to the subordinate judicial offices which they now fill, has been to deprive the young European civilians of a mode of training for the appellate jurisdiction; you spoke of that as an inconvenience on the one hand, to be compared with benefits on the other hand, resulting from the alteration of the system. Have there been great benefits, in your judgment, in the administration of India, connected with the employment of Natives in the Judicial Department?

Yes, I think so; under strict supervision and control, and with liberty to appeal from their decisions, I think the Native judicial agency has been exceedingly useful, and has worked well.

3030. Lord *Stanley* of Alderley.] Do you think that the employment of Natives should be extended to any of the higher offices in the Judicial Department?

My own feelings would prompt me to say yes; but, I think, on the Bombay side we have for the present gone as far as prudence dictates. It was only just after I left India, which is only 18 months ago, that a new grade of judicial offices was created in the Bombay Presidency, which was founded on a proposal I made as a member of the Government. My proposal was, that there should be appointed a Native Assistant to every Collector; but I think a modification, which was made, I believe, by the Home authorities, is better: they have adopted a plan which was before adopted, and has been found to answer in other parts of India, of appointing Deputy Magistrates, which I think an improvement.

3031. Lord *Elphinstone.*] Is not the jurisdiction of the Native Judge at Bombay much higher than it is at Bengal or Madras?

I am unable, from memory, to compare the two; but I will state what the jurisdiction is in Bombay: the Native Bench there is divided into three grades, called Principal Sudder Amin, Sudder Amin, and Moonsiff; the Principal Sudder Amin has unlimited jurisdiction in original suits, and an appellate jurisdiction from the other two Courts up to 100 rupees, which I think might be advantageously increased; the Sudder Amin has jurisdiction up to 10,000 rupees, and the Moonsiff to 5,000, without any appellate jurisdiction.

3032. Lord *Stanley* of Alderley.] Does the Principal Sudder Amin decide those cases without the assistance of any Judge as assessor?

Yes; he has no assistance whatever, and no check whatever, except that all his decisions are appealable, either to the Zillah Court or to the Sudder Dewanny Adawlut.

3033. Have the decisions of the Principal Sudder Amins in general given satisfaction to the natives?

I do

J. P. Willoughby,
Esq.

18th March 1853.

I do not feel myself very competent to answer that question, never having officiated as a Judge in the Mofussil, or interior.

3034. Have you been able to form any opinion as to whether the Natives would prefer to have their cases decided by a European Judge or by a Native Judge?

I cannot offer an opinion upon that subject, and I do not think anybody can who has not been a Judge himself.

3035. Is there a greater disposition to appeal from the decision of a Native Judge, than there is from the decision of a European Judge?

I am not aware that there is any general disposition to that effect; reasoning from the number of appeals, one is disposed to think very favourably of the decisions of the Native Bench; but I would not form an opinion entirely upon that; I do not think that is the sole criterion; there is the expense and inconvenience of the appeal; such, for instance, attendance of the appellant at a distant Court, which is an important consideration for the poor man: it does not always follow that, because an appeal is not instituted, the judgment has been honest and correct.

3036. Earl of *Ellenborough.*] Do not uncovenanted servants fill the situation of Deputy Magistrate?

Yes; they are included in what is called the "Uncovenanted" branch of the service.

3037. You spoke of the grade of Deputy Magistrate having been established in Bombay very recently, by orders from home; are those situations occupied by covenanted or by uncovenanted servants?

By uncovenanted servants entirely. A curious consequence has resulted from the Act of Parliament removing all legal disability for office: for instance, it was intended by passing that Act, to promote the great object which most people now have in view, of giving the natives a larger share in the administration of the country; I think it says, that by reason of caste, creed, or colour, no man is disqualified for office, that clause in regard to the natives has operated, as far as the judicial line is concerned, injuriously in one respect: on the Bombay side they were originally called Native Judges, and Principal and Junior Native Commissioners. Upon all disqualification being removed by Act XXIV. of 1836, of the Government of India, and their designation being altered, uncovenanted Europeans became eligible for situations which formerly were exclusively filled by natives; but in the increase of the uncovenanted service I think a direction should be given towards the natives; I say this without any disrespect to any persons who have obtained employment in the Judicial Department; but the uncovenanted class of Europeans, generally speaking, merely come out to India to obtain employment, and obtain it in some instances through favouritism and interest, and without passing through the same rigid test which other parties are subjected to; at least, cases of this kind have come under my observation, and they should, in my opinion, be guarded against.

3038. Earl of *Ellenborough.*] Has that provision in the Act of Parliament led to the more extensive employment of half-castes?

I think so. On the Bombay side, a proportion of the native judicial establishment are half-castes. I see also that among the Deputy Magistrates recently appointed at Bombay, there are one or two English names: these, I presume, are Indo-Britons. I would not, however, exclude Indo-Britons altogether, though by far the larger proportion ought, I think, to be natives.

3039. Lord *Stanley* of Alderley.] Do they make a useful class of public servants for inferior situations?

Yes; I have seen some very excellent servants of that class.

3040. Earl of *Ellenborough.*] Supposing the capacity the same, and the qualifications the same, should you prefer a Native to an Indo-Briton?

It is rather invidious to answer that question; but I think I should, because I think the native is more likely to be respected amongst those over whom he is placed, especially in the interior; but, as I have already stated, I have met some very able and excellent servants of the Indo-Briton class.

J. P. Willoughby, Esq.

18th March 1853.

3041. *Chairman.*] What functions are exercised by the member of the Government who is *ex officio* the Chief Judge of the Sudder Adawlut?

The appointment of a member of the Government to be *ex officio* Chief Judge, I believe, originated in motives of economy. His functions are confined simply to cases wherein a competent Court, according to law, cannot be formed without his presence: for instance, where the Court is reduced to two Judges, and they differ in opinion, then the Chief Judge, as he is designated, is called in to decide between them.

3042. Do you approve of the working of this arrangement?

I think, in some respects, it is objectionable for a member of Government to exercise judicial functions, and it is only a makeshift. I think, during the period I was Chief Judge, I was not called in above 10 or 12 times; they certainly were cases of great importance; they were cases of the last resort—of life and death—and important civil cases. It is a convenient and economical arrangement, since it provides occasionally a fifth Judge, without any increase of expense to the State; but, in my opinion, it possesses no other recommendation.

3043. Earl of *Harrowby.*] And one who is not constantly required?

No. I can give the precise words of the Regulation I. of 1830, section II.: this, after stating that the member of the Council shall be Chief Judge of the Sudder Dewanny Adawlut, says, "that in order that no unnecessary addition may be made to the extensive duties of his higher office, his functions as Chief Judge shall be limited to his officiating as such when a competent Court for the decision of the suit or other matter under consideration cannot otherwise be had;" in other words, he is only requested to assist in cases where a difference of opinion arises between the Judges. The Court is composed of four Judges; but sometimes two of them may be absent on circuit, or from some other cause, and a case may arise involving some difficulties, and there may be a difference of opinion between the two Judges then composing the Court.

3044. *Chairman.*] Then, when the two Judges cannot agree, the difficulty is settled by calling in a less experienced person?

No, I do not think that is the result; it may have been so in my case, but it is not so in general: usually, the member of Council who has most judicial experience is appointed *ex officio* Judge: in my case it was not so, because it so happened that when I was *ex officio* Judge, there was no judicial member of the Government; but when I vacated Council, a gentleman came in and succeeded me as Chief Judge, who had been employed all his life in the Judicial Department.

3045. Lord *Wharncliffe.*] Is it necessary that every man appointed to the Bench in the Sudder Dewanny Adawlut should have been in the Judicial Department before, and should have been experienced as a Judge?

On the Bombay side, that is the general practice, certainly. To the best of my recollection, every person appointed to the Sudder Court in my time has had considerable experience as a Judge; but I do not think there is any positive rule to that effect.

3046. Have you ever known an instance of a man being appointed to the Sudder Dewanny Adawlut without having been a Judge before?

I think not; I am not quite certain whether there was not a gentleman appointed (Mr. Simson), whose time had been passed chiefly in the Revenue Department; but I think he had previously been a Judge for a short time, and he remained in the Sudder Court for a brief period only.

3047. *Chairman.*] Is it, in your opinion, desirable that the Supreme Court should be amalgamated with the Sudder Court, for the purposes of appeal; have you ever considered that subject?

I have, within the last few days; that is, since I understood that I was to be examined upon the subject of the judicial administration of India: my impressions are adverse to it.

3048. For what reason?

Because I think we should then have more of that system, the reform of which is one of the greatest necessities in England itself; I think the superior, and more especially

J. P. Willoughby,
Esq.

18th March 1853.

especially the professional learning of the Queen's Judges would exercise undue influence in the Court so composed. I am aware that the amalgamation is advocated by the able men who composed the Law Commission, in order to combine the learning of the English Bench and Bar with the local experience and knowledge of the peculiar laws, manners, customs, prejudices and languages of the diversified races of people to whom we have to administer justice; but although I do not feel very competent to offer an opinion on the question, I am not disposed to think favourably of the arrangement; at all events, for the present.

3049. Earl of *Ellenborough*.] You think they would over-ride the Company's Judges?

That is exactly what I mean.

3050. Lord *Elphinstone*.] Do you think that the Supreme Court has been a great blessing at Bombay?

It may have administered good law, but it is very expensive justice. A shilling in England is a rupee in India, or twice the amount; and what in the Courts of Law in England would subject the suitor to an expense of 10*s*. would, in Her Majesty's Courts in India, subject him to an expense of 20 if not 30*s*.; and I believe, with reference to its jurisdiction, it is a very costly Court of Law.

3051. Lord *Wynford*.] More expensive than the Company's Courts?

Certainly, necessarily so; I do not believe that the remark of Mr. Macaulay, in regard to the Supreme Court of Madras, applies to Bombay, namely, that it had already "fulfilled its mission," meaning that it had impoverished the inhabitants; but I have occasionally heard wealthy and respectable natives express a dread of becoming involved in law proceedings on account of the ruinous expense; and I believe, in consequence, they frequently, in preference, resort to private arbitration of their differences; at times, however, they find it difficult to keep out of Court.

3052. Lord *Elphinstone*.] Are there not employed persons called "Dubashees?"

There are, I believe Native lawyers who frequent the Court, and obtain a livelihood by promoting litigation; this, however, is probably the case in the Company's Courts also.

3053. When a rich man dies, do not those men go to his heirs to try to set them by the ears, for the sake of getting a suit?

That may be the case, though I cannot speak to the fact. There is another point of view, in regard to an amalgamation of the Queen's and Company's Courts: I think that the feeling in Her Majesty's Courts is occasionally antagonistic to the local Government; I think that they keep in mind the state of things for which they were originally appointed, when it was really necessary to keep the authorities in India under some judicial check; but I do not think that necessity exists at the present day, when a free press—the vastly improved means of communication between India and England—and public opinion in the course of formation—operate very powerfully as a salutary check. This remark has chiefly reference to the collisions which occurred about 20 or 25 years ago between the local Government and the Supreme Court, when the Bombay Presidency was administered by two of the ablest Governors we have seen,—the Hon. Mountstuart Elphinstone and the late Sir John Malcolm. During my time, I must add, that perfect harmony existed between these two high authorities; but in the peculiar position in which we are placed in India, any clashing of authority is attended with pernicious consequences, especially at a distance from the seat of government, and in the Native States; it necessarily impairs the strength of the Executive Government. An intelligent author has recently very justly observed, "When India was really intrusted to a Joint Stock Company, it was necessary that representatives of the Crown should have the power, judicially, to check the proceedings of the Company; but now that the distinction between the British Government and the Company in reality no longer exists, the traditions of ancient jealousy and antagonism, kept up by the name, situation and semblance of a separate and superior source of authority, are noxious and objectionable. It is perfectly clear, that the authority under which all different servants of the State, Courts of Justice, &c. act, should be assimilated throughout India."—Campbell's "India as it may be," page 65.

J. P. Willoughby, Esq.

18th March 1853.

3054. *Chairman.*] Do you think that the legislative power should be vested in the Government of India only, or in the subordinate Governments?

On the whole, I am of opinion that it should be vested in the Government of India only, with the reservation, that proper consideration should be shown to the representations of the subordinate Governments, who have often much better means of acquiring a knowledge of what is really required than is possessed by the central Government.

3055. Do you approve of the present mode of constituting the Legislative Council?

Not having myself seen the working of it, except from a distance, I am not very competent to offer an opinion, but the main defect, as it seems to me, is, that there is no person to represent the distant parts of India; for instance, there is no person who has practical experience and a local knowledge of the Madras Presidency or the Bombay Presidency.

3056. Is great publicity given to proposed laws before they are enacted?

The course is, that an Act is proposed and published in the Government Gazette, for general information, and an interval of longer or shorter duration allowed before it is passed and becomes law.

3057. Lord *Wharncliffe.*] Why do you think it would be desirable to vest the entire legislative power in the central Government?

I think the effect is to ensure more uniformity, and, to a certain extent, greater care in the consideration and preparation of the laws; and besides this, although I should deprecate anything like an extensive introduction of the English system, there is a professional member at Calcutta, whose advice and legal knowledge must be exceedingly useful and beneficial, when modified by the opinions of men possessing Indian knowledge and experience; his advice may not always be followed, although he can give it.

3058. Are you of opinion that, considering the great variety of races, and habits and languages and other elements of society in India, it would be desirable to establish an entire uniformity of legislation over the whole of those territories?

I think, if you refer to the question of one code for all India, it is very doubtful; I think it exceedingly doubtful whether any code can be framed which would work well throughout every part of India, applied to so many different races in different degrees of civilization.

3059. Would not the same reasoning apply to the question of a single legislative authority?

I think I provided for that by pointing out the defect which appears to me to exist in the present Legislative Council, namely, that there is no representative of the different parts of India, Bombay or Madras.

3060. Lord *Elphinstone.*] Do you think it would be better to refer all matters proceeding from the Governor in Council of Bombay or of Madras to a single legislative member of the service in the Legislative Council?

No, certainly not; if it is the practice merely to refer the representations of the subordinate Governments to a single member of the Legislative Council, I should say that that is wrong.

3061. Would not that be the infallible consequence of such a system: if you had one member of the Legislative Council sent from Bombay and one from Madras, would not the representations of the local Governments be infallibly submitted to the local member of the Legislative Council, and would not his opinion over-ride the collective opinion of the Governments of those Presidencies; in short, would he not have undue weight?

I presume that it would not follow that, because a member was appointed from Bombay or from Madras, he would have authority to decide whether any particular law should pass or not; I presume the whole Council would deliberate upon it, although his local knowledge would be applied to it, and no doubt he would be consulted regarding it by the Governor-general.

3062. Would not his local knowledge probably carry great weight in the Legislative Council?

I think it would, and moreover that it ought to do so.

J. P. Willoughby, Esq.

18th March 1853.

3063. Would not it probably outweigh the collective opinion of the local Government?

I should hope that any question of that kind would be decided upon the weight of reasoning on each side; if the weight of reasoning was on the side of the Governor in Council, if the reasons which he urged for or against the passing of the Act were sound and valid, the opinion of the individual member appointed from the subordinate Presidency ought not to over-ride them.

3064. You think that the opinion of the member present in the Council would not carry greater weight than the opinion of the absent Government?

Certainly the person present would have greater opportunities of urging his opinion upon the attention of the Government of India than the absent Governor in Council.

3065. Lord *Wharncliffe*.] Supposing an arrangement of that kind were established, in what respect would a general Legislative Council, acting with the advice of a member of their body, sent from a subordinate Presidency, be a better body for judging of the expediency of legislation than a well-selected Council within the Presidency for which the legislation was intended?

I think the reasons which I gave in favour of legislation being with the central Government were uniformity, a more careful consideration, and the assistance of valuable legal and professional advice. In fact, I must confess that I think that the legislation, during a certain period when I was connected with the Bombay Government, was not well digested nor well prepared.

3066. Do you think that that observation would apply, for the most part, to the legislation which has taken place, in former days, in the inferior Presidencies?

No, certainly not; because I consider that Bombay has produced the best code of legislation that exists at present—that is the Elphinstone Code. That was compiled by unprofessional men, but the ablest and most experienced men in the service, under the guidance of one of the most eminent and distinguished statesmen the services of India have produced.

3067. Lord *Broughton*.] You think that the presence of an individual sent by the Bombay Government to the Legislative Council of India would be sufficient to secure due attention to the interests of that part of India?

I think it would operate in that way, and would also afford the Governor-general in Council a ready means of acquiring the information necessary to decide whether legislation on any particular subject was necessary or advisable.

3068. Earl of *Harrowby*.] Would you have that member of Council go there as a kind of representative of the Governor in Council of Bombay or of Madras, and be removable by him?

No, I do not think that arrangement judicious; because, unless a man has free and independent action, he is not worth much.

3069. He would not go there merely as an Attorney (so to speak) to represent the opinions of his employers?

No; it appears to me that he should be in just the same position as any other member of the Council.

3070. By whom would you have him chosen, by the Governor in Council, or by the Governor-general?

By neither; I think that so long as the Court of Directors continue to form a part of the Home Government for India, he should be nominated by that authority.

3071. Earl of *Ellenborough*.] In any case, the Home authorities would nominate the members of the Legislative Council?

Yes.

3072. At present, are not legislative measures relating to Bombay communicated to the Bombay Government before they are passed, that they may give their opinion upon them?

Yes, that is the invariable practice. All laws, previous to their enactment, are referred to the subordinate Governments, and by them to their local Boards, and officers considered most competent to offer a sound opinion regarding them.

When

J. P. Willoughby, Esq.

8th March 1853.

When the want of any particular law, moreover, is made manifest, under any particular circumstances of administration, it is represented to the Government of India; and although considerable delays have occurred (and that is the chief if not the only evil which occurs to me of the legislative power being exclusively vested in the central Government), yet ultimately attention has been paid to the matter.

3073. Lord *Broughton.*] Would you have the representative of the Bombay Government in the Legislative Council of India consulted upon other matters besides those of the Bombay Government?

I would not appoint a member from the other Presidencies merely for that Presidency. He should have the same voice in all matters which come before the Legislative Council as the Bengal members of the Government.

3074. Lord *Elphinstone.*] Do you suppose that the references to the legislative member from each of the subordinate Presidencies would be confined to legislative subjects; do not you apprehend that every recommendation coming from the subordinate Government would be submitted to him, and that his opinion would be generally taken in preference to the collective opinion of the subordinate Government?

That would depend very much upon the character of the person selected; if he had the interests of his Presidency at heart, he would not, I apprehend, be influenced in that way.

3075. Lord *Wharncliffe.*] I understand that, according to the plan which has been proposed, the Supreme Legislative Council would have the absolute power of legislating for the whole of India, with the assistance of members from the subordinate Presidencies?

Yes; as I have already stated, it is now usual to give the local Governments the opportunity of commenting upon any proposed Act before it becomes law.

3076. But that is a mere custom of courtesy?

Not exactly so; the representations of the local Governments have often induced the Government of India to modify proposed measures. The local Governments also originate laws for consideration.

3077. Do you think it would be a satisfactory arrangement to the two other Presidencies, that a Legislative Council, composed as it must probably be of a majority of members belonging to the Bengal Presidency, and with a representative from each of the two others, should have the power of originating and enacting measures without any interference on their part?

The local Governments have already ample power of objecting to or suggesting alterations in any proposed Acts before they become law; and also of suggesting laws. The ultimate decision, in my opinion, should rest with the central Government.

3078. *Chairman.*] You stated that you held an appointment in a Non-regulation Province; did that give you an opportunity of judging of the working of the judicial system there?

The appointments I held were at Baroda, in Gujerat, the capital of his Highness the Guicowar, and in Kattywar, and those Provinces were so far different from what is generally understood by the term Non-regulation Districts, that no part of the territory belonged to the British Government, although it exercises very considerable powers in those territories. In Kattywar, for instance, there was a Political Court of Criminal Justice established. In fact, I believe I may say that I conducted the proceedings of the first Court of that kind that was established in Western India, and most exceedingly useful Courts they have proved to be.

3079. How were those Courts constituted?

I must first explain, that Kattywar is divided into between 200 and 300 different jurisdictions, distributed amongst chiefs of different tribes, possessing one or more talookas or districts, or one or more villages. In course of time it became apparent to the British Government that many crimes of a heinous character escaped punishment altogether, either from the disinclination or the inability of the parties to whom those jurisdictions belonged to dispense justice. For this reason the Court was established to take cognizance of offences of the above description

J. P. Willoughby, Esq.

18th March 1853.

description, and those only. It is the desire of Government, by the exercise of such authority, to interfere as little as possible with the power and authority of the Chiefs themselves; in fact, only to take cognizance of serious offences which would otherwise altogether escape punishment. The Court in Kattywar was established, I think, in 1832-33, and is presided over by the Political Agent in the Province, assisted by three or four Chiefs as Assessors. It was found so useful, and to work so well, that similar Courts have subsequently been established in other parts of the Bombay Presidency.

3080. What power was vested in them as Assessors?

The practice varies; in Kattywar it is the practice to allow the Native Chiefs who officiate as Assessors to pronounce a verdict of guilty or not guilty, and also an opinion as to the punishment to be awarded; in the Courts which have been recently established, they have only the former power, the same as a jury in England.

3081. Which do you think the best system?

I rather incline to the latter practice, because, according to my experience, I found it exceedingly difficult occasionally, under the system of allowing the Assessors an equal voice with the President, to dispense impartial justice in cases of a peculiar description, such as where a Bhat or Brahmin was concerned, or where a powerful robber was concerned, and fear of his vengeance operated; so also in cases of female infanticide, and of Tragga and self-immolation. Those were all cases which were embraced in the Court's jurisdiction, because, had they not been included, they would, if left to the Native Chiefs, have passed unpunished altogether; therefore, although since 1832-33, they have been tenderly dealt with, yet they have been dealt with, and the perpetration of those offences been very much checked.

3082. Did you find the Assessors useful in assisting you in deciding upon the guilt or innocence of the accused parties?

They were very useful, sometimes in eliciting evidence, sometimes in explaining the peculiar customs of different tribes prevailing in Kattywar; these tribes are a very singular and interesting fraternity, easily managed if you know them, and are careful to treat them kindly, and pay due respect to their peculiar customs and usages.

3083. Earl of *Ellenborough*.] Did the Chiefs attend in person or by their vakeels?

Whilst I was in the Province, I used, whenever practicable, to select the Chiefs who were in attendance upon other business; I did not, whenever I could possibly avoid it, put them to the expense and trouble of coming to Rajcote, the head quarters of the Kattywar agency, for the express purpose. This practice is, I believe, still followed in Kattywar, except that the agents of a few of the most powerful and important Chiefs are now permitted to sit as Assessors. The great object to be kept in view is to select those who will act without fear or favour, and who are in no way interested in the party arraigned.

3084. Was that system established by Sir John Malcolm?

I believe there is a difference of opinion as to whom the merit is due of the original suggestion. Sir John Malcolm suggested it at Bombay; but I have heard it stated that the idea originated in another part of India; but the late Sir John Malcolm is entitled to the merit of having first adopted it at Bombay.

3085. It is only on that side that that system is established, is it not?

I am not aware of its having been yet established at the other Presidencies.

3086. Earl of *Ellenborough*.] Has that Court in Kattywar been successful in suppressing female infanticide?

The suppression of female infanticide is a distinct question altogether. I made use of the Court in some cases which I substantiated; and now, if a case of infanticide did occur, I have no doubt the parties would be arraigned before that Court; but I am happy to think that those cases are now very rare in Kattywar; the last report I have seen on the subject represented that the practice has been almost, if not entirely, suppressed.

J. P. Willoughby, Esq.

[illegible] March 1853.

3087. *Lord Privy Seal.*] Do the natives assist at all in the conviction of cases of that kind?

Yes, they did assist.

3088. Earl of *Ellenborough.*] Infanticide is not so common among the poorer classes as among the higher classes?

It does not depend upon the wealth or poverty of the parties; the practice was however confined to one or two particular tribes in Kattywar, but more especially the Shareja tribe of Rajpoots, among whom it was systematically practised by high and low, rich and poor.

3089. Arising in a great measure out of the great expense of marriages and the difficulty of marrying daughters?

Also pride of birth; they think it beneath them to contract marriages for their daughters with inferior castes, or with castes they consider inferior in rank: with the exception of some very high caste Rajpoots, they think there are no persons sufficiently high to be allied to their daughters. No doubt the expense of marriages is another consideration, but it pervades the highest and the lowest of that (the Shareja) caste. It was a systematic and inveterate practice of the whole tribe.

3090. *Chairman.*] Does the presence of those Assessors make the Courts more popular?

I think it does; I think they feel a pride in sitting on the Bench with the chief European authority of the place. It must also be satisfactory to the accused to see their own Chiefs sitting in judgment upon them.

3091. By what principles of law are those Courts regulated?

They are generally guided by the spirit of the Bombay Code of Regulations, untrammelled by its forms—the substance, and not the shadow, is aimed at.

3092. Is any appeal allowed from them?

All cases of importance are transmitted for the review and consideration of the Government. Sentences of death or transportation must be confirmed by the Government. No instance of capital punishment has as yet occurred.

3093. Earl of *Ellenborough.*] Not by the Sudder; they have nothing to do with the Sudder?

No; I have heard since I left India that a proposal has been made to place those Courts under the Sudder, which I think would be most inexpedient.

3094. Lord *Wharncliffe.*] Where do the cases come for appeal from those Courts?

They are forwarded to the Political Secretary; all the proceedings in each case are submitted by the Political Agent, and the Political Secretary submits them, like any other proceedings, to the Governor in Council. These Courts impose a heavy duty on the Government, and that perhaps is an objection.

3095. Then in that case the Governor in Council exercises regular judicial functions?

Certainly. The fact is, these Courts are not established by any law; they are constituted by the paramount authority of Government in the territory of semi-independent Chiefs.

3096. Earl of *Ellenborough.*] With the acquiescence of the Chiefs?

With their tacit acquiescence, certainly; but the Chiefs are not independent. In Kattywar they are either tributary to his Highness the Guicowar or to the British Government; they are tributary to the British Government as succeeding the Peishwa's rights, and to the Guicowar who has delegated all his rights to the British Government, except his tribute, which is collected by us. It is in virtue of our paramountcy that we have established these Criminal Courts. The formal acquiescence of the Chiefs was never, I think, asked; this was not deemed necessary, with reference to their dependent condition.

3097. But they must co-operate, or you could not carry it on?

Yes, and their co-operating cheerfully with the British Government proves, I think, that these Courts have not created dissatisfaction.

3098. Do

J. P. Willoughby,
Esq.

18th March 185

Do you think that they probably would not co-operate with the same degree of cordiality if the appeal were to the Sudder?
I think it very likely they would not.

3099. Lord *Wharncliffe*.] Do you know whether the appeals have been very numerous from those Courts?
They are simply criminal cases, and, as I have mentioned, all cases of importance are forwarded to the Government by the Court, and the sentence is stayed till the decision of Government is received. Sentences of death or transportation must be confirmed: I believe, however, that in Kattywar not a single instance of capital punishment has occurred.

3100. Do all important cases undergo a revision without any formal appeal?
Yes, it is part of the system that they must be sent up for the review of the Government.

3101. Are you aware whether many cases have occurred in which the Government have reversed the decision of the Court?
There have been cases where the sentence has been annulled, and still more frequently where the sentence has been mitigated; particularly, for instance, in cases of Tragga, or when a person of the Bhat or Charon tribe kills or wounds another, generally a member of his own family, to extort a claim, just or otherwise, under the superstitious belief that the blood of the deceased will be on the head of the party who has wronged him. This practice was formerly very rife in Kattywar, and required to be very tenderly dealt with in the first instance: the Government, in those and similar cases, have frequently mitigated the sentence of the Court.

3102. How is the revision of the cases conducted by the Governor in Council; is it by reading the documents?
Entirely upon the record.

3103. There is no argument before him, as there would be before a Court?
None whatever; but references are occasionally made to the Court on points on which the information may seem defective.

3104. Earl of *Ellenborough*.] In a case of that kind, the Judicial Secretary would present a Report to the Governor?
This would be the duty of the Political Secretary, the proceedings being conducted and recorded in the Political Department.

3105. *Chairman*.] Is the police efficient in the territory subject to Bombay?
Not so efficient as I could wish; but that subject was under consideration for about two or three years at the time I was a member of the Government. There are three documents which I think will give the Committee full information, not only of the present state of the police of the Bombay Presidency, but also as to the remedies suggested by the local Government, and the measures which have lately been adopted by the Home authorities since I left India, and of which, therefore, I am only imperfectly informed. The documents I refer to are, first, a Minute recorded by Sir George Clerk; second, a Minute by Lord Falkland; and, third, a Minute by myself.

3106. Lord *Monteagle* of Brandon.] What are the dates of those Minutes?
Sir George Clerk's Minute is dated the 28th April 1848; Lord Falkland's is dated the 28th February 1850; and my Minute is dated the 11th April 1851. The discussion had not been completed before I left India.

3107. Earl of *Ellenborough*.] Is the police uniform in its constitution and management in different parts of the Bombay Presidency?
No; it varies very much in the different districts. Formerly the police was under the management of the Sudder Foujdaree Adawlut; now the Government have taken it under its supervision, which is, I think, a great improvement.

3108. Have you not availed yourself, to a large extent, of the village police, under the Bombay Presidency?
One great defect of our system of police is, that we have neglected the native institutions and establishments, and introduced our own more extensively than, in my opinion, is expedient.

3109. In

J. P. Willoughby, Esq.

8th March 1853.

3109. In Sir John Malcolm's time, did not he avail himself village police?
The theory is, that we have done so; but I am afraid that, practically, we have impaired their efficiency very much.

3110. But his general principle was to avail himself, as far as he could, of the existing native institutions?
It was.

3111. To change as little as possible?
I think he was opposed to all abrupt changes; he was not altogether opposed to progress.

3112. Lord *Monteagle* of Brandon.] Is there any local tax levied for the support of the police in Bombay?
There is in the island of Bombay.

3113. Is that applied to police purposes, and is it adequate for the object?
It is only on the island of Bombay. There are a number of municipal taxes levied in Bombay which do not prevail in the interior; for instance, there is a wheel tax, everybody pays an annual tax for his horse or carriage; there is also a house tax; and there is what is objectionable, although it is applied to a good purpose, a shop and stall tax, a tax upon trade. The Government has nothing to do with he collection of these taxes, they are under the control of the municipal body, composed of Native and European Justices of the Peace. In 1851, the house tax, omitting fractions, realized 128,303 rupees; the wheel tax 80,474, and the shop and stall tax 62,293 rupees; all these are applied either to municipal purposes or in part payment of the police of the island of Bombay; to the latter the municipal fund contributes a certain fixed amount, the Government defraying the remainder.

3114. Earl of *Ellenborough.*] Have not taxes of that description been abolished in the territory of Bombay?
Yes, entirely.

3115. In what year?
I think in 1844.

3116. *Chairman.*] Is life and property more secure in those territories or in the Native States?
The system in force in the Native States depends so much upon the personal character of the Prince, it is difficult to make a comparison: under a good Prince, I should think it extremely probable that life and property are as secure, and perhaps more secure, in the Native States than in British territory, for this reason, that in the former of course the native institutions are in full vigour; for instance, the ancient system of our own ancestors of village responsibility is more efficiently enforced; that custom is recognized by our regulations, but compensation is obtained through such a tedious process that it becomes almost a dead letter. When robberies are traced to or committed within the limits of any village, if neglect or connivance be substantiated, the Magistrate may, by Reg. XII. of 1827, sect. XXXVII. cl. 1, impose a fine, and apply the amount in compensation; this fine may be imposed on the village at large or on its police establishment: if the former, the fine is to be realized as revenue demands; if the latter, by imprisonment, in commutation, as directed for fines in general: the utility of the practice depends upon the promptitude with which it is enforced.

3117. Lord *Wharncliffe.*] Is it compensation for injuries?
The rule is this: when a robbery or murder or any other offence is committed, the town or village within whose limits it occurs is responsible, either to produce the offender or to afford compensation for the loss sustained, or to trace the offenders to some other village. The custom is so well recognized that in Gujerat almost in every village there are found persons called Puggees, whose express duty it is to track offenders by their footprints; and it is wonderful with what intelligence and dexterity they perform this duty.

3118. Lord *Mont-Eagle.*] Did you ever hear that travellers can halt more safely in the Native States than in ours?
There can be no doubt that travellers are in greater security, where the obligations

J. P. Willough
Esq.

18th March 18

tions of village responsibility exist and are enforced, than in our own territory, where those obligations are now nearly nominal; wherever it is maintained, it is usual for the village to supply guards for the night to travellers halting within their limits, and without this precaution the travellers would be probably as insecure in native as in British territory. When I was a member of the Government of Bombay, I constantly advocated a return to this wholesome practice, under such restrictions as would guard against its abuse. I have myself witnessed the great security it affords to life and property in Kattywar and other parts of the Bombay Presidency; it, in fact, enlists the co-operation of the community in the prevention and detection of crime not to be secured in India by any other mode.

3119. Earl of *Ellenborough.*] Does not a gentleman travelling pass with greater security through the Bombay territories than through the native territories?

Generally speaking, a European is safe, though there are frequent instances of his baggage being plundered. The fact is, in many parts of the Bombay Presidency there are several tribes much addicted to thieving, such as the Bheels and Coolies of Gujerat, and the Ramooses of the Deccan. At times they have given the local Government much trouble; but, on the whole, I think they have improved under British administration. They can be reclaimed from their predatory habits by a mild but firm policy.

3120. Lord *Stanley* of Alderley.] You alluded to three minutes which had been made with respect to police: are the police now regulated in accordance with those minutes?

A great change has taken place; but I am sorry to hear that what I considered as the key-stone of the improvement has been rejected at home. The great change is taking the management from the Sudder Adawlut and vesting it in the Government; it will now be principally supervised by the Secretary to Government in the Judicial Department; all reports on police matters will now be made direct to that functionary, and he will review the proceedings under the orders of Government. But the great defect of the former system was, that up to the present time there was no person whose peculiar duty it was to ferret out crime, and when a great offence had been committed, to repair to the spot and investigate it. The police of each zillah is under the Collector and Magistrate; but this officer is frequently overwhelmed by his other duties: and to remedy this defect, I proposed to appoint two provincial superintendents of police to control the police, and who should be at all times ready to proceed wherever their presence was most needed; but I understand that this suggestion has not been adopted, and that a central supervision has been preferred to a local supervision.

3121. Earl of *Ellenborough.*] Who are the local superintendents of police?

The police of each district is under the Magistrate, who is also the Collector; under him, in the same district, there are superintendents of police, who are generally commandants of police corps, and therefore tied down to head quarters.

3122. Where do you think the police is carried on most efficiently; in the districts where there are those police corps, or in other districts where the police is more of a civil character?

That point also is discussed in the papers to which I have alluded; but the opinion to which I came was, that the police corps required to be de-militarised; that they were made too much like infantry regiments of the line, dressed and accoutred and armed as such. The fact is, they were altogether inefficient as detective or preventive police; too much attention was shown by their commandants to military discipline, and drill and parade.

3123. Might not the Government have easily corrected that?

I believe it has been corrected; part of the reform was to amend that.

3124. Who appoints the police; does the Magistrate appoint them himself?

The Magistrate appoints the inferior grades; but the Kamavishdars, who are vested with police jurisdiction and authority to a limited extent, are appointed by the Government on the Magistrate's recommendation.

J. P. Willoughby, *Esq.*

18th March 1853.

3125. How does the Magistrate find the persons whom he wishes to place in the police; how does he select them?

He should select them with reference to their qualifications for the peculiar duty required from them.

3126. In point of fact how does he select them; are they recommended by the officers of his cutcherry?

I cannot say that.

3127. Does not the civil police differ much in its efficiency according to the character of the different Magistrates; have not some, for instance, armed them, and given them some degree of discipline, and even a uniform?

That is done by the Government; all the police corps are equipped by the Government. In some corps a clothing fund has been established, in part from small monthly deductions from the pay of the police; uniformity of system does not however exist.

3128. But where there is no battalion, where it is a civil police under the Magistrate, is it not so?

The civil police, consisting of sebundy and peons, are clothed by the Government to a certain extent; they receive a coat once or twice a year: this police is very inefficient, and I fear scarcely trustworthy, except under strict supervision and control.

3129. Where there is something of a military character given to the police, does not the officer in command exercise a discretion in rejecting a person whom he thinks unfit, even if proposed by the Magistrate?

Certainly, he enlists recruits for his own battalion; all the discipline and interior economy of the police corps is in the hands of the Commandant.

3130. The corps is not a corps for which the Magistrate is responsible?

The Magistrate is only responsible for the peons' establishment. The police corps are subject to his requisitions when needed, but he has nothing to do with their formation, discipline or equipment. We have no corresponding class to the Burkundauze of Bengal.

3131. Lord *Stanley* of Alderley.] What was the character of the system of the ancient native police which you think might have been beneficially preserved?

I referred chiefly to the district and village police, and particularly to the practice I have described of exacting village responsibility; the natives of India are, speaking generally, exceedingly apathetic upon matters of this kind; they do not co-operate, as is customary in most countries, in the suppression of crime. Under the Native Government, whenever a robbery or other offence is committed, the village in whose limits it is committed is held responsible; under the British Government the practice is recognized in theory, but is neglected in reality. This system requires to be carried out with some tact and discretion; but in the Native Territory, and I believe in the Non-regulation Provinces, it has worked exceedingly well. For some parts of the country, moreover, our system of police, as in other matters, is not sufficiently simple and summary; in our anxiety to prevent wrong and oppression, we impose check upon check in this as in almost every other branch of the administration; on a point of mere form undoubted offenders are occasionally permitted to escape punishment; and trivial irregularities of procedure are noticed by the supervising authority far more severely than is necessary.

3132. You think that the practice has been to neglect too much the co-operation of the natives in assisting us to maintain police in the native districts?

I do not think there has been any disposition to neglect the co-operation of the natives, but they are not inclined cheerfully to afford assistance; they are apathetic, and sometimes afraid to act for fear of the consequences. Under our administration the district and village police of the Native Government has become much impaired. The Patell under a Native Government is looked up to as the chief authority in his own village, not only in revenue, but police matters; even under our regulations he is recognized as the head officer of the police of his village, subordinate to the Magistrate and the District Police Officer, and is entrusted with authority to punish trivial cases of abuse or assault, by confinement in a suitable place not exceeding 24 hours; but the exercise of this

J. P. Willoughby, Esq.

18th March 1853.

authority is so incumbered by processes and reports, that Patells generally very seldom act. They are afraid to act, for if any little deviation from the regulations occurs, they fall under the displeasure of the supervising judicial authorities, and sometimes under penal consequences. For a very excellent account of the native system of police and criminal justice, and the agency by which it is managed, I beg to refer the Committee to the Honourable Mr. Elphinstone's "Report on the Territories conquered from the Paishwa," p. 35, *et seq.*, printed at Calcutta in 1821, and re-printed at Bombay in 1838.

3133. Earl of *Ellenborough.*] Have you ever had much thuggee on your side of India?

Not to the same extent as in other parts of India. There is a branch of the Thuggee Department operating in the Bombay Presidency, and it has been very successful. There is no doubt that the crime formerly prevailed, more or less, throughout the Bombay Presidency; a great number of thugs have been apprehended in it. The Thuggee Department was established under a distinct law, and has worked most admirably.

3134. Lord *Wharncliffe.*] Does dacoitee prevail much in the Bombay Presidency?

Yes, if by that term is meant gang robbery, but not to the extent that it does in some parts of the Bengal Presidency.

3135. Earl of *Ellenborough.*] Have not the native people become very efficient policemen under the Thuggee Department?

The system we have adopted for the suppression of thuggee is very remarkable and peculiar. The chief agents whom we employ to suppress that crime are old thugs admitted as approvers.

3136. *Chairman.*] Does the crime of perjury exist much in the courts of law of your Presidency?

I think it is one of the great blots of India. It is an evil which creates the greatest difficulty in the judicial administration of that country.

3137. What effect had the substitution of an affirmation for an oath in judicial proceedings?

That question was discussed when I was a member of the Bombay Government. A circular was issued calling for a return of the number of cases of perjury. If I recollect right, the return showed a considerable increase, subsequent to Act V. of 1840, substituting a declaration for an oath in judicial proceedings, when Hindoos and Mahomedans are parties; and my impression is, that the change has certainly acted injuriously. I do not think that in many cases a simple affirmation is any check or restraint, whereas the oath formerly administered, and which was varied according to the belief of the party under examination, was more efficient in extracting the truth.

3138. Lord *Elphinstone.*] That change was made partly in deference to the feelings of the European Judges who administered those oaths, was it not?

I believe it originated in what is commonly called the anti-idolatry movement. Of course, under a Christian Government and in a religious point of view, the reason of the change is obvious.

3139. *Chairman.*] What has been the result of the permission to Barristers to practise in the Company's Courts?

I think good and evil has resulted from that measure.

3140. Will you state what is the good and what is the evil?

I have no doubt that the introduction of a Bar composed of English Barristers must on some points produce a beneficial effect on the Company's Courts and their proceedings. A highly educated Barrister will expound better law, secure more attention to the law of evidence, act as a salutary check upon the inexperience and ignorance sometimes manifested by the Judges, and will at the same time ensure more regularity of procedure; but on the other hand, he is likely to introduce the forms and technicalities of English practice to a greater extent than is in my opinion desirable. A poor suitor cannot, however, afford to retain a Barrister; for I have heard it stated as a fact, that at Bombay a Barrister will not enter the Sudder Court, except for a consideration far beyond a poor man's means to afford; hence arises what appears to me to be an evil. Under the

J. P. Willoughby, Esq.

18th March 1853.

present system, moreover, we occasionally see a Barrister from Westminster Hall appearing in Court on one side, and a poor illiterate uneducated Native Vakeel on the other. I think that may very often lead to a denial of justice and wrong decisions.

3141. Earl of *Ellenborough.*] None but very rich people can engage an English Barrister to go into Court?

The expense certainly injuriously affects the poorer suitors. I may illustrate what I meant to convey in my last answer by a case in which I took considerable interest, from its probable effect upon the peace of the country. In this case a measure of great public policy adopted during the Honourable Mountstuart Elphinstone's Government, was entirely upset by a decision of the Bombay Sudder Court overruling, on appeal, the decision of two much more experienced though inferior Courts, influenced in their decision by the persuasive eloquence of an English Counsel; I never could account for the decision otherwise. It was of such consequence, that being perfectly acquainted with the nature of the case myself, because many years ago, when a young man, I was one of the agents employed to carry it out, I brought the case under the notice of the Government, and suggested that measures should be taken to obtain a reversal of the decision. There were only three ways in which this could be effected; 1st. by applying for a review of judgment; 2d. by an appeal to the Queen in Council; 3d. by applying to Legislative Council for an express enactment, to maintain Mr. Elphinstone's policy. In the first instance I thought it would be more becoming to apply for a review of judgment, and that course was resolved upon before I left India; but although this occurred more than two years ago, I do not know what has been done; but I believe the evil not only still continues, but, as I anticipated, is extending. The injurious effect of the employment of Counsel was very manifest to me on perusing the proceedings in that instance.

3142. Lord *Elphinstone.*] When did that instance occur?

It must have been about March or April 1851; the case was this: under Mr. Elphinstone's Government the pecuniary claims of a class of men peculiar to Guzerat, named Grassias, were recognized, although they were merely a sort of black-mail levied under former Governments; instead of collecting what they had hitherto extorted from the villagers direct, they agreed to commute these levies for a fixed money payment annually from the public treasury; in consideration of the receipt of this money, and by the custom of the country, they were bound to protect the villages from which the payment is received. The question which came before the Court was whether this grant which, in the language of the country, is called "Tora Gras," was saleable or not. The Sudder Court, overruling the decisions of the local Courts, Native as well as European, who of course had experience in the matter, ruled it was saleable; the consequence of this decision, if not reversed, will be, that a large amount of public revenue which was paid to purchase the peace and service of a warlike and troublesome class, will gradually pass into the hands of unwarlike classes, who are totally incapacitated from the performance of the obligations for which the money was originally granted.

3143. Lord *Monteagle* of Brandon.] Would not the difficulties arising from the superior eloquence of the English counsel over his opponent in the cause be diminished in proportion as you improved the education of the practitioners in those Courts, the Vakeels and others?

No doubt it would to a certain extent; but then I very much doubt whether we shall be able for many years to train up a Native Bar that could compete with the English Bar.

3144. Do you conceive that extending in the Elphinstone institution, and other institutions of that character, classes for the instruction of persons intended for the law, whether practitioners or judicial officers, would have a tendency that way?

I think if law lectures and law classes were established in the Elphinstone institution, it would produce, though slowly, a good effect.

3145. Lord *Wharncliffe.*] Can you explain, in general terms, the nature and extent of the alterations that were introduced by the Bombay Regulations of 1827?

J. P. W
Esq.

18th March 1853.

The Bombay Code was chiefly founded on the previous Regulations of the Bombay Government, commencing, I believe, from 1799, but with such modifications introduced as were deemed requisite to meet the peculiar circumstances of the country, and to respect the feelings and prejudices of the natives. It is not founded, like the codes of the other Presidencies, on the Mahomedan law, but the reason of that is obvious; the population comprised in the Bombay Presidency are essentially Hindoo; that is, I find by a census taken in the island of Bombay on the 1st of March 1849, and in the interior on the 1st May 1850, that in a population of about 8,000,000, the Hindoos, and castes approaching to Hindoo castes, are as ten to one as compared with others. It was framed by unprofessional but very able officers of Government, under the direction and supervision of the Honourable M. Elphinstone, whose distinguished name it bears. It was afterwards added to by Regulations passed by the Local Government up to the last Charter Act, and since then, the legislative power having by that Act been taken from the subordinate Governments, by Acts passed according to exigency by the Government of India.

3146. Lord *Elphinstone.*] Under the Mahratta Government the Mahomedan law did not prevail?

No, it did not; and therefore we had not that difficulty to encounter in Bombay. By section XXVI., Regulation IV. of 1827, of the Civil Code, it is declared, that the law to be followed is: "Acts of Parliament, Regulations of Government, Custom of the Country, Law of the Defendant, and Justice;" the two first when they are applicable to the case at issue, otherwise, "the usage of the country in which the suit arose." When no such usage exists, the Law of the Defendant, and in the absence of specific usage, "Justice, Equity and Good Conscience." When points of Mahomedan or Hindoo law are involved, the law officers of those persuasions are referred to; and on points of usage the heads of sects and castes.

3147. Lord *Wharncliffe.*] Does the code contain a complete definition of crimes?

Yes. Regulations XI. and XII., XIII. and XIV. are very complete. They define—1st. The persons subject to the operation of the Regulations of Criminal Judicature: 2d. Rules for the administration of the police, and the duties and powers of the various police authorities: 3d. The constitution of Courts of Criminal Justice, and the functions and proceedings thereof: 4th. Crimes and offences, and the punishments to be inflicted.

3148. Is there also a Code of Regulations of Civil Procedure?

Yes, Regulation II. of 1827, defines the constitution of Courts of Civil Justice, and the powers and duties of the Judges and officers thereof. Regulations III. and IV. mode of procedure of Courts of Civil Justice. Regulation V. is a statute of limitations against civil suits. Besides these there is another distinct portion of the code, called the "Revenue Branch," which is chiefly administered by Revenue officers, with an appeal either to the Zillah Judge or the Sudder Dewanee Adawlut. The Civil Code, being founded for the most part on the English model, is far too complex and artificial for India.

3149. Was this code promulgated altogether?

It consisted at first of 27 Regulations, and it has been added to afterwards by local legislation up to 1834, and since then by Acts of the Government of India; 26 of these Regulations came into effect on the 1st September 1827, throughout "the Bombay territories heretofore subject to the Regulations." The Deccan, Candeish and Southern Mahratta country were afterwards brought under the Regulations by separate enactments, and no territory can be so subjected without a special Act.

3150. But it was at the time promulgated in its entirety?

Yes; on the above date, with the exception of Regulation XVIII., the Stamp Act which was introduced at a later period.

3151. And it took effect, superseding the system which subsisted before?

Yes; the system before was founded upon Regulations, many of which had become obsolete or inapplicable.

3152. Were

J. P. Willoughby,
Esq.

18th 1853.

3152. Were you in India at the time?

Yes, I was; I arrived in India in the beginning of 1819.

3153. Can you say whether that change was effected with facility or otherwise?

I never heard of any difficulty in introducing the code itself, though I have heard of objections that it was not simple enough in its forms and processes. I may, however, mention, that even this code deals tenderly with certain classes. For instance, when the Deccan was subjected to the code, we did not rigidly adhere to the maxim of constitutional Governments, that all in the eye of the law are equal: a special Regulation was passed (Regulation XXIX. of 1827), in favour of the privileged classes, under the title of Sirdars of the 1st, 2d and 3d classes, and a special officer called "Agent for Sirdars" was appointed to try and decide all complaints of a civil nature, which, under ordinary circumstances, would have been tried by the Zillah and subordinate Courts. The same judicious course was introduced, at a later period, into the Southern Mahratta country. The 1st class was composed of persons of the first distinction and influence under the Paishwa's Government, on account of birth, political importance, or the religious estimation in which they were held. Suits against this class are tried and decided by the Agent, respect being shown to the privileges due by custom and usage to the defendant, and other peculiarities of the case. No decree can be executed against them without reference to Government, who can pass such order thereon as may be deemed just and equitable. Against the Agent's decree, a regular appeal lies to Government, and from the Government to the Queen in Council. The 2d class is composed of persons not equal in consideration to the 1st class, but of high rank and importance under the Paishwa's Government. Suits against them are similarly tried, with a due regard to the rank and privileges of the defendant, &c. &c. An appeal lies from the Agent's decision to Government, and from Government to the Queen in Council. The 3d class is composed of persons inferior in rank to the 1st and 2d classes, but enjoying privileges under the former Government. From the Agent's decrees against this class, an appeal lies to the Judges of the Sudder Dewanee Adawlut. Mr. Elphinstone's object in framing this law was to render the introduction of our system more palatable to the higher classes in the Deccan, to which classes the unbending and equal practice of our ordinary Courts is very obnoxious. In this, that eminent man exhibited his usual sagacity. The distinction of being ennobled among the privileged classes is highly valued; but I regret to think that they will gradually become extinct; for by orders from home, the local Government is prohibited from making any new entry in the list without reference for permission, which is now rarely accorded.

3154. In the year 1830, Sir John Malcolm expressed some strong opinions upon this code; he says, "Satisfied, as I was, that the new Code of Bombay was a great improvement upon the system of our Provincial Judicature in India; that it was concise, clear, and singularly free of technicalities, I could neither upon this occasion, nor upon any other (and questions often arose), consent to any modifications or change of its enactments that were not proved to be absolutely necessary;" he then says, "I am perfectly satisfied that, in criminal cases, this system will be found to further the ends of justice very materially, while it greatly elevates the most respectable inhabitants of the country;" and then again he says, "This system, as established at this Presidency, has fully met expectation; it may have occurred, on some occasions, that forms have been neglected; but I am not aware that it has ever been alleged even that it has not proved sufficient to meet every end of justice;" would your judgment lead you to confirm the opinion expressed by Sir John Malcolm in that Minute of the 10th of November 1830?

I think the eulogium upon the code is rather high, because I have frequently heard of objections offered to it, from its following too closely the English model, and from the great extent to which it allows the privilege of appeal. But with all its defects, it is undoubtedly far superior to anything else that has been hitherto compiled as a practical work. I do not suppose that it can be compared with the "Macaulay Code," because that is a more learned, professional and scientifically arranged work than the Bombay Code. I presume, however, to doubt whether the "Macaulay Code," if it ever becomes law, will be found to work practically as well as the "Elphinstone Code."

3155. Then probably you would say, after the opinion you have expressed, that although some imperfections existed in that code at the time of its introduction, which it has been necessary to remedy since, nevertheless the introduction of that code has been an important benefit to the Presidency?

I should most undoubtedly say so; and I have often thought that it might with advantage have been made the basis of the labours of the Law Commission.

3156. Lord *Monteagle* of Brandon.] Has that code been translated into any of the vernacular languages?

Yes; into the Gujerattee and Mahratta languages.

3157. Have you heard any complaints of the difficulty of making it intelligible to Natives who were able to read in those languages?

I have not heard there was any difficulty; but I have heard of imperfections in the translation, through negligence and carelessness.

3158. *Chairman.*] Are you at all acquainted with a Petition which has been presented to the House of Lords, from Bombay?

That Petition was prepared after I left India; but I have seen it in the public prints.

3159. Does it represent the feelings and the wishes of the Natives?

I very much doubt it. I think the Petition is more European than Native; though, in some degree, it may represent the opinions of the Anglicized portion of the Native community at the Presidency, but certainly not in the interior. It is, moreover, a fact within my knowledge, that a disagreement has arisen in the Association of Natives at Bombay, from whom the Petition is stated to have emanated; I learn this fact from a very intelligent Native, a Parsee gentleman, who visited England some years ago, and is therefore, I believe, known to many persons in this country. His name is Monackjee Cursetjee; he has written a pamphlet, dissenting from some of the views and proceedings of the Association from which that Petition originated. I also know it to be a fact that Sir Jamsetjee Jeejeebhoy, whose deeds of princely munificence have acquired for him a reputation not confined to India, dissents from the views of the Petitioners, and refused to sign that Petition; in fact, Sir Jamsetjee and his family, and others, have, I believe, altogether seceded from the Association.

3160. What is the pamphlet to which you have alluded; is it in English?

It is in English; it is in some respects a remarkable paper. Monackjee Cursetjee sent me a copy of it, and therefore I feel myself justified in alluding to it. The fact is, according to his statement, the Petition is got up by what he jocosely calls "young Bombay." I was glad to see the movement of the Natives of Bombay, and for the most part approved of the prospectus published by the Association on its first formation; the Petition, however, is a very different document, and in my opinion cannot be regarded as a reflex of the Native mind, or to represent the feelings and wishes of the Native population of Western India. It treats, in fact, of subjects on which the Natives of India, generally, are almost entirely ignorant.

3161. Lord *Monteagle* of Brandon.] Is not Sir Jamsetjee Jeejeebhoy the President of the Association from which the Petition emanated?

He was Honorary President; he joined the Association, but afterwards, I am informed, seceded, and declined to sign the Petition which has been presented to Parliament.

3162. Lord *Stanley* of Alderley.] When was that pamphlet published?

I received it, with a letter from the author, in November last; it is inscribed "J. P. Willoughby, Esq., with Monackjee Cursetjee's compliments." The author is anxious that his countrymen should be advanced as far as they are qualified to be advanced, and has his own views on the subject; but he evidently thinks they are proceeding too fast.

3163. You think that that Petition of the Natives should not be taken as conclusive evidence of the feelings of the Natives?

Certainly not; it treats of questions regarding which Natives, generally speaking, and especially in the interior, know but little, and are therefore incompetent to form an opinion.

J. P. Willoughby, Esq.

18th March 1853.

3164. Lord *Monteagle* of Brandon.] Will you be good enough to run your eyes over the names of the Natives in that list now shown to you?

I have done so; it contains the list of Office-bearers of the Association of Natives recently formed in Bombay, and of the Committee appointed to carry out its objects; the name of the author of the pamphlet is included; as I have already stated, he joined the Association, and then he took his countrymen to task for demanding so much more than they were in his opinion qualified to undertake.

3165. Will you have the goodness to state whether the list of the Committee of that Association comprehends the names of many of the most respectable of the Native population of Bombay?

Undoubtedly; but then I may again observe, the proceedings of the Association have not been conducted with unanimity. When they came to deliberate upon their Petition, a wide difference of opinion occurred, and some of the most influential members, particularly Sir Jamsetjee Jeejeebhoy, the President, and his family, would not sign the Petition that has been sent home; although Sir Jamsetjee has not had the benefit of receiving the education (more European than Asiatic) his sons have received, yet he is perhaps one of the most acute, shrewd and intelligent of the Natives of India; he is unquestionably one of the most benevolent.

3166. Lord *Broughton.*] Was not Monackjee Cursetjee in the employment of the Government?

He was in the employment of the Government at one time; first as an officer of Customs, and afterwards as a Commissioner in the Court of Requests in Bombay; that office was lately abolished, and he now, I believe, practises as a Vakeel in the Sudder Adawlut.

3167. Lord *Stanley* of Alderley.] Would you consider the opinion of the writer of that pamphlet, Monackjee Cursetjee, to be as important as the opinions of any of the Natives in Bombay who have signed that Petition, as affording a fair representation of the feelings of those Natives with regard to the Government of India?

I certainly should be so disposed, but I do not think that either represent the feelings of the people of Western India; at the utmost, they merely represent the people who have associated most with Europeans at the Presidency. Monackjee Cursetjee is in many respects a remarkable man; he speaks and writes English exceedingly well; his visit to England, where he was much noticed, among others, by the late Sir Robert Peel, greatly enlarged his mind, and afforded him an opportunity, which he did not neglect, of becoming familiar with the Government and institutions of this country, to an extent rarely acquired by a Native of India.

3168. Lord *Monteagle* of Brandon.] You were not at Bombay during the time of the existence of this Association and the preparation of the Petition?

No; but I have been informed how it originated. It originated, according to the author of this pamphlet, with a number of very respectable young men, students in the Elphinstone Institution, who think that the education which they have received entitles them to fill much higher offices than are now open to the natives of India, but for which they, in fact, are at present not qualified. An accurate knowledge of English is, no doubt, one qualification for office; but it is not the only or indeed the chief qualification for employment in a Collector's Kutcherry or an Adawlut, where the proceedings are almost entirely conducted in the vernacular dialects of the country, and where an experience only to be acquired by extensive practice is essentially requisite. With regard to petitions generally, I believe that if a motive exists, any petition may be got up, especially in India; all that is requisite is to get the heads of the caste to sign it, and, of course, every man under them signs it also.

3169. Lord *Wharncliffe.*]* Was the author of this pamphlet, Monackjee Cursetjee, connected with the Government in any way?

He was for some years in the service of Government, but, as he himself stated in his pamphlet, he has a grievance against the Government: on the formation recently of a "Court of Small Causes in Bombay," the situation he held was abolished, on which occasion he did not think he received the consideration he was entitled to; in fact, he considers himself very unjustly treated.

J. P. Willoughby, Esq.

18th March 1853.

3170. So that there was nothing in his connexion with the Government to bias his judgment?

Not the slightest, to my knowledge; on the contrary, for the reason above stated, if he has a bias, it would, I presume, be of the opposite character.

3171. Lord *Monteagle* of Brandon.] Have you read the Petition itself?

I read it when it first appeared in the public papers.

3172. Lord *Colchester.*] You have stated that two well-educated natives, whom you have particularly mentioned, differ from the Petition; do they differ generally from all the points of the Petition, or only from certain particular points of the Petition?

I beg to state, in the first place, that this pamphlet only proceeds from one person; the writer of the pamphlet explains how he differs from the petitioners; he is for changes, progress and reform as well as his countrymen, but he thinks they are proceeding too fast; the moral of his observation is that they should not go beyond their depth; he proposes as the motto of the Association, "First creep, then walk, then run;" in other words, he advises his countrymen not to overleap their strength.

3173. Earl of *Ellenborough.*] Does he contest the statement of grievances made by the petitioners?

He repudiates several of them.

3174. Can you state which of them he repudiates?

I am not prepared to do that without comparing the pamphlet with the Petition; I think myself that the first impulse to these Petitions was given by the press, and that the petitioners in preparing them obtained the professional assistance of Europeans. I have heard (I do not know how far it is true) that the Madras Petition was, for the most part, prepared in London. I hope it will not be understood, from the allusion I have made to this pamphlet, that I am opposed to the advancement of the natives to the extent to which they may be considered qualified; I have that as much at heart as any person. If you do not mean to enlarge gradually the sphere of their employment, the education you are giving them will only lead to disappointment and discontent.

3175. Lord *Monteagle* of Brandon.] Will you have the goodness to take a copy of the Petition, and to compare the statements in it with the pamphlet of Monackjee Cursetjee, and to extract from that pamphlet, for the information of the Committee, such passages as you think important, as giving a different view of the opinions and feelings of the Natives with regard to the Government of India?

I will do so.

3176. Earl of *Ellenborough.*] Even if you had ascertained, without doubt, the opinion of the majority of influential persons in any one of the Presidency towns, could you thence infer what the opinion of the people in the Mofussil was?

Certainly not.

3177. They have no influence on the Mofussil generally, in matters of opinion?

Not much; I think, as Mr. Elphinstone observed long ago, they are almost a different class of people. A late distinguished Governor-general is stated to have observed, shortly after his arrival at Calcutta, "I must go back to Cairo, to learn the customs and manners of the East."

3178. Lord *Elphinstone.*] Are not some of the persons who signed that Petition Mahratta chiefs, gentlemen living at Poona?

I dare say they are; but the copy given to me does not contain the names of the persons whose signatures are attached to the Petition. I am personally acquainted with some of the Sirdars, or Chiefs of the Deccan, and know most of them by repute, and if their names are attached, it would confirm my impressions regarding the Petition, for it treats of subjects upon which I feel satisfied they are not competent to form an opinion, and upon which I doubt if they have any opinion. Some intercourse, however, undoubtedly now exists between Bombay and Poona; for instance, Sir Jamsetjee Jeejeebhoy has a house at Poona, and, with his family, pays occasional visits to that place.

J. P. Willoughby, Esq.

18th March 1853.

3179. Earl of *Ellenborough.*] Merely to say that our Government is better than that which immediately preceded it, that of the Paishwa in its decadence, is not to say a very great deal for it, is it?

I have no doubt that the upper classes have reason to regret the change; it has in a great measure destroyed their influence and power; but the masses, I hope, are very much better off under our Government than they were under the Paishwa's.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday the 5th of April,
Two o'clock.

Die Martis, 5° Aprilis 1853.

LORDS PRESENT:

The LORD PRESIDENT.	Lord MONT-EAGLE.
The LORD PRIVY SEAL.	Lord WYNFORD.
Earl of ALBEMARLE.	Lord ASHBURTON.
Earl of ELLENBOROUGH.	Lord STANLEY of Alderley.
Lord ELPHINSTONE.	Lord MONTEAGLE of Brandon
Lord COLVILLE of Culross.	Lord BROUGHTON.

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

JOHN POLLARD WILLOUGHBY, Esquire, is called in, and further examined as follows:

J. P. Willoughby, Esq.

5th April 1853.

3180. *Chairman.*] AT the conclusion of your former examination, the following question was put to you by Lord Monteagle,—"Will you have the goodness to take a copy of the Petition, and to compare the statements in it with the pamphlet of Monackjee Cursetjee, and to extract from that pamphlet such passages as you think important, as giving a different view of the opinions and feelings of the Natives with regard to the Government of India?" Have you been able to attend to this subject?

I have. I have, however, experienced some difficulty in complying with the Committee's request, at the conclusion of my examination on the 18th ultimo, that I would select passages from Monackjee Cursetjee's pamphlet, as giving a different view of the opinions and feelings of the Natives with regard to the Government of India, from those conveyed in the Petition which has been presented to the House of Lords by certain Natives at Bombay, and which originated in an Association of Natives recently formed at that place. The whole pamphlet is almost entirely controversial, and dissenting from the views of his countrymen in many respects, and from the proceedings of the Association, of which originally he was a member.

I may premise by stating that this Association was established on the 16th August 1852. Almost all the most influential and respectable members of the Native community of Bombay appear in the first instance to have joined it, and a very liberal subscription was entered into for the purpose of carrying out the objects of the Association. The tone of the prospectus, as at first issued, was extremely moderate, and as one sincerely desirous to advance the interests of the Natives of India, I hailed (though not without some misgivings) its appearance with satisfaction. The President of the Association, Jugonath Sunkersett, Esq., sent me a copy of the prospectus, with a letter, requesting me to assist the objects of the Association; a compliment, I presume, paid to me because he is aware that I have always advocated the advancement, within proper bounds, of the Natives of the Presidency to which I belonged to the utmost of my ability.

Shortly afterwards I received from Monackjee Cursetjee a long letter, dated the 1st October 1852, forwarding a copy of his pamphlet, and entering at considerable length into the history of the proceedings of the Association. I afterwards received a second letter from him, dated the 2d November, enclosing extracts from a newspaper commenting favourably on his pamphlet, which he informed

J. P. Willoughby, Esq.

5th April 1853.

informed me had created considerable sensation, and a warm discussion at Bombay. Not being able to refer to the writer for permission, I do not feel myself at liberty to make public use of these letters, which I regret, for undoubtedly they would elucidate the subject under inquiry.

When I received Jugonath Sunkersett's letter, as well as those from Monackjee Cursetjee, I was incapacitated, from domestic circumstances, from attending to such matters, and I have not even yet replied to them, as in courtesy I ought to have done With regard to the pamphlet, I had not even read it until I was informed that I was to be summoned before this Committee.

Monackjee Cursetjee in the first instance became a member of the Association. He took part in the proceedings of its first meeting, and he addressed it as follows:—

"It was supposed by some that instead of supporting the object of the assembly, I should endeavour to oppose it. Those who think so are mistaken. He who attempts to frustrate any object for the real good of his country must not be considered his country's friend. I came prepared to say a great deal, for which I saw no occasion at present; and as the Committee is to do everything, I propose placing a memorandum of my views before that body in the hope of doing it a service."

The pamphlet appears to have originated afterwards when Monackjee Cursetjee found that his views did not accord with those of other members of the Association, and especially in regard to the nature of the Petition which it should present to the Home authorities and to Parliament. It is headed, "A few passing ideas for the benefit of India and Indians." It is divided into numbers 1, 2, 3, 4; and I may here add, that since I first appeared before this Committee, namely, on the 23d ultimo, I received in continuation No. 5, constituting Part the third.

In No. 1, which is dated 26th August 1852, after explaining his reasons for committing his views to paper, "in relation to the proposed move among the natives contemplated at a select meeting at the house of Jugonathjee Sunkersett, Esq.," Monackjee Cursetjee thus explains why he had warmly opposed the raising of "such large sums of money, for the purpose, as it was then believed, of being squandered away."

"Several months ago, when it was given out that a few young men, or 'Young Bombay' (as they are now called), bent upon making a *demonstration* against the existing Company's Government, founded upon a number of alleged grievances, I was asked by, among other of my friends, Messrs. Jugonath Sunkersett and Bomanjee Hormusjee, what I thought of these young men's project, and I told them what I thought of the same; I said I feared (though I hoped otherwise) the competency of these young men to handle the subject of the real wants of the country, either with accuracy or effect, prone as I have found them to be to exaggeration, and to abuse every thing in government, whether with or without grounds, and that I fancied their grand aim was to collect money and squander it away in fruitless pursuits. In reply I was told we should hear them; and we heard them, or rather two of their prominent members; this was several months ago. I will not dilate on what passed when we met at Mr. Bomanjee Hormusjee's house, except that the result was self-evident in support of what I had thought. They theorized without a basis to support their theory upon. They then appeared to be quite rampant; and a paper which they subsequently sent in, containing the heads of grievances, &c., more than confirmed my previous belief of their ignorance of the subject-matters they professed to handle; and the precipitancy with which they afterwards went round to the houses of the native gentlemen to raise subscriptions beforehand, and before defining or maturing any plan as to what was to be done with the large sum of money thus precipitately and privately raised, confirmed what I had before merely fancied, that securing a capital in money was their grand move, perhaps the only object; I hope, and indeed I shall be glad to find, I have been mistaken in my calculation on the subject, and that these young men will then receive their due meed for their disinterested exertions, if successful for the benefit of their country: I will leave the paper I have just mentioned to speak for itself; it obviously requires no descriptive remark. Here it is."

The list is comprised under 27 heads, evidently culled from the Newspaper Press of India and England, commencing with a request for the abolition of the seminaries at Haileybury and Addiscombe, and ending with a request for the admission

admission of representatives into the British Parliament, and into the Court of Directors for the Affairs of India.

J. P. Willoughby, Esq.

5th April 1853.

The author of the pamphlet, after some remarks condemnatory of the unreasonable and extravagant nature of the demands contained in this paper, continues:

"It is a fact which I am grieved to be obliged to maintain, that I have as yet not had the pleasure of conversing with any of our leading and influential Native gentlemen, who appear to have made these peculiarly interesting subjects their study, and who could enlighten me thereon, and now it is undenied on all sides that they are in possession of 'no figures and facts' as to the real and not fancied wants of the people of Western India. When I endeavoured to impress this on the minds of my friends, the reply was, they frankly confessed their defects in the above essential respects, but they professed their resolve *not to do anything without consulting several European gentlemen (whose names were mentioned), who are friends of the Natives, who recommended the formation of the Society, and by whose suggestions and advice the proposed body before and after its formation would generally be guided.* This was a candid acknowledgment, and shows beyond question that the Natives of Bombay are not yet in a position to think for themselves, and to act on their own judgment in matters of such public importance, and yet they would be for forming themselves into a body to be called *exclusively* their own, and make it so appear." (The *italics* in the above passage are the author's.)

After pursuing this subject farther, and expressing his own opinion that the views of the Society should be confined to submitting to the friends of the Natives in India and England "a compendium of actual facts," and his conviction that any plan or project for ameliorating the condition of the people of India, from wheresoever it might originate, would be attended to in England, the author observes: "But to do more than this, to cling to a loftier aim, to make a show of the thing, to hire agents here and in England to make an outcry, by furnishing such agents with all sorts of gross grievances, without regard to their quality or accuracy, in the existing state of the native mind, native ideas and native feelings, in relation to the Government and the governed of British India, would be the most ill-advised course of proceeding that could be devised by the worst enemy of the Natives of Bombay."

Monackjee Cursetjee then enforces his views in the form of a dialogue, from which I will only select the following extracts:

"A. Do you not think it is time that we should now do something for the Natives of India at the present crisis in England? The young Bombay is now up, and goes about raising subscriptions to redress grievances.

"B. What grievances? Where are they? I have been wanting to see them defined; not merely because they appear to some to be grievances, but the cause and reason why they are grievances; what we want is to ascertain for fact the actual requirements of the people of India; or, in other words, *what was the state of the country before, to what it is now? And, if not prosperous, to what would they attribute the want of prosperity, and what should be done to render it prosperous?* As to the fund being raised, I feel curious to know what they require it for, unless those who have a hand in it mean to make a good use of it." (The *italics* in this passage also are the author's).

"A. But they say the money must be first raised for the very purpose of getting information from the people in the interior; and as Associations have been formed with the same view at Manchester and Calcutta, it would not look well if something of the kind is not done here in Bombay.

"B. It is, then, because the people of Lancashire and Bengal formed themselves into Associations that you think it will give the Bombay people some *abroo* to have a like body formed here. In truth you thought nothing of it before others had done it; however, it would not be unadvisable *if* we could stand on parity with the inhabitants of Bengal and Lancashire to raise a contest against the Government.

"A. Let me interrupt you; I don't mean Lancashire, but Manchester.

"B. Well, now, what is the difference between Lancashire and Manchester?

"A. I confess I don't exactly know, but I suppose it is all the same."

B. points out that Manchester is a gaum or city; Lancashire a zilla or district; and, after pointing out wherein the people of Manchester and of England differ morally, mentally and physically from the inhabitants of Bombay, he concludes the

P. Willoughby, Esq.

5th April 1853.

the dialogue (which the author states is not altogether imaginary, but in the abstract a real one) thus:

"We are not accustomed to discuss such matters in the way the English people do; we can scarcely take up a public question without mixing private considerations therewith; we could not or would not judge for ourselves, but are ever ready to side with the view of any one who may be supposed to be superior in ability, without caring to ascertain how far his views might be sound: we are all mortals; a mortal is not infallible, be he ever so able or great in erudition. I have observed with pain our countrymen rush headlong, even blindfolded, if led only by any one who knew his part and their character well enough to raise all sorts of hopes in them, no matter upon what foundation. In their ignorance our countrymen willingly swallow anything that is palatable to their views, expectations or prejudices. In all these respects, generally speaking, the comparison between the Europeans and Natives is impracticable; it is a task in itself, great but deeply interesting, to study the character of the people of the different hemispheres; and until the people of India generally, and the inhabitants of Bombay particularly, are able to comprehend the same, as well as the principles of the British constitution and laws, as applicable to this country and England, they would not be able to discriminate the vast moral difference between their past and their existing rulers, or learn to be consistent and reasonable in their requirements from Government."

Monackjee Cursetjee then refers to a meeting which he attended, and convened apparently to discuss the grievances of the Natives, their causes and remedies; and publishes a letter, which was read at the meeting, dated the 4th June 1852, and which it appears he addressed to the son of a nobleman in this country. In this the writer replies to an invitation he had received, to communicate "anything he would wish to see altered, amended or brought before the especial attention of the Committee on the Charter now nominated by the House of Lords." The following extracts will give an idea of the author's views on this great question.

After referring in terms very true, but not very complimentary, to the ignorance and apathy existing in England respecting India, not even excepting a large majority in both Houses of Parliament, where, repeating a common observation, "any Indian subject is a sign or ring-bell to its members for dinner," he observes, "On the other hand, there are a number of writers and speakers on Indian subjects (unfortunately for India they are not few, for they do it more harm than good), who, on the strength of their imperfect, incomplete or superficial acquaintance with the subject they speak and write upon, arrogate to themselves the title of 'Friends and Advocates of the Natives,' and who are ever ready to take up and deal in any quantity, without regard to quality, of grievances and complaints from India. Again, although the state of ignorance in England with respect to India is lamentable, reversing the case it is worse. The ignorance of the Natives of India with regard to England, its constitution, its institutions, character, and peculiarities of its people, &c., is so vastly greater in the scale, that they generally reject the legitimate and resort to questionable sources of seeking redress for their grievances, much of which they themselves create, and fancifully lay at the doors of their rulers; whilst the remedy for others, though very simple, and at their own doors, they would not, in fact could not, comprehend, and go to seek it at far and out of the way places, where often it cannot be obtained. I wish there were many like your noble father, who would first seek information, and then bring their judgment to work for the good of this country."

The author then encloses a copy of a correspondence with a "distinguished and rising Member of Parliament," in which his views are compressed "on some of the requirements of India consequent on Mr. Bright's move in 1850 to get a Parliamentary Commission sent out to India." He is not favourable to a Commission of this kind, but suggests, that questions on all necessary points, under distinct heads, should be sent to India, "with instructions to the local Governments to appoint local Committees, composed of Natives and Europeans, and cause *vivâ voce* examinations (not written, for the reasons to which I shall presently advert) of such as are supposed to be capable of furthering the object of the inquiry. There are not many Natives who have made the Civil, Judicial, Financial and Political Administration of this Government their study. But there are, or have now sprung up, many who, having gained no personal knowledge or experience, invariably re-echo the sentiments (often trash) of the newspapes

writerr

J. P. Willough
Esq.

5th April 1853.

writers and others, who are either prejudiced or interested in abusing or lauding Government acts; consequently, if written answers are taken of them, the answers generally, in all probability, will not be their own, but prepared for them by the class I have just described. I would humbly suggest this as the most advisable preliminary course for the Committee to follow. I have another reason for this suggestion; it would put an end to a monstrous 'humbug' which is in full play among the ignorant herd, at the instance of some of the rapacious rupee seekers, who inveigle those they call 'Young India' (fresh from schools, and ripe for anything), into the belief that the best course is to form Associations, depute persons to England, raise grievances and complaints in and out of Parliament, and last, though not least, raise subscriptions to bear the expense of such Commissions (of course these money seekers themselves forming the Commission); and thus 'Young India' has been making, or rather attempting to make, some outcry of the kind. Subscriptions seem to be a touchword here with every undertaking nowadays, as if, without raising funds to meet expenses (a term to fill pockets), nothing whatever could be done. I have no sympathy with such a class of thinkers. I half suspect many such start ostensibly *pro bono publico*, but in truth for individual benefit, or, in other words, a refined species of pickpockets. Kindly place this letter into your noble father's hand, with my respectful remembrance."

I quote the following passage, alluding to certain personal grievances, because, as I stated in reply to a question put to me, I was not aware that the author of the pamphlet has any particular bias towards things as they are, or any particular affection towards the local Government, though the contrary might be inferred: "Though personally I have some cause to be dissatisfied with Government measures in denying me justice, which I expected, and had a right to expect, at the hands of one of the late acting Governors, and our present local Government, I would not suffer for a moment personal feelings and personal considerations to commingle in discussing general questions of Government administration, which require to be discussed purely on general and public grounds. 'Measures, not men,' in reviewing such questions, alone distinguish a disinterested critic from a partial and interested one. No Government is free from defects in its management. If the Company's Government is faulty in several respects, there is also much that is commendable in it in other respects."

It appears that, after the perusal of the letter from which these extracts are made, it was declared by the Association that "there was to be no Association for the purpose of representing Native grievances, by means of hired agency in relation to the Charter discussion, and that no accurate information had yet been collected to ground any specific requirement of the people of the interior thereupon," and it was resolved to form a Society—a permanent Society, "to collect information relative to the requirements of the people of Western India, to have the same from time to time submitted to the authorities in India and England." This was the origin and first object of the Bombay Association, which the author of the pamphlet joined and assisted in establishing. But he was adverse to the raising large subscriptions to carry out the objects of the Society, on which subject he offers some sensible remarks, and was of opinion that Europeans as well as Natives should be admitted members. On this point he states, "I thought, and still think, it would have been correct to display in its true light the existing strength of those interested in getting up this Society. It has not been and could not be denied, that the Natives of Bombay are, as yet, not in a condition or position, from various causes, to manage such a formidable body, or undertake a discussion of such important public matters by themselves, except on the suggestion of their European friends. In fact, from what I learnt, the originally proposed lofty pretensions of the contemplated body have been softened down by the advice of some of the judicious European friends of the Natives; that these European friends have been from the first committed in this matter, and they are to be timely advisers in managing the proposed body when formed. Let us in candour throw off the mask and not exclude them, or rather exclude ourselves, from the benefit of their advice and suggestions; always however acting on our own judgment to discriminate how far such advice is for our real good or otherwise. I have another reason too in wishing the Europeans to co-operate with us in this proposed co-operation. Truly speaking, the merchants and people of the manufacturing districts in the United Kingdom are as largely interested in fostering the resources of India as the Indians themselves. A combination of their energy and capital with the capital and energy of the people of India, would do India a

J. P. Willoughby, Esq.

5th April 1853.

greater amount of substantial benefit, than if the Indians were to have entire command of the disposable cash in the Government Treasury and Mint placed at their disposal. But the people of India must put their shoulder to the wheel, and meet the people of England half way in their united enterprise, and must not look to the Government for everything. By the way, the settled habit of the people of India always looking to Government for everything is another misfortune, which in no small measure retards the prosperity of the country: what have the Natives of India, like the Natives of England, by themselves done for their country? Precious little, or nothing worth noticing."

In the second part of his pamphlet, which is dated the 28th of August 1852, Monackjee Cursetjee first reprints an address he made on the formation of the Association, repudiating the idea that he was opposed to it, and proceeds to remark as follows:—"The erection of the Bombay Association for its professed objects looks very attractive, and I hope will prove substantially advantageous to the people of this side of India. But much depends upon the prudence of management in that body. Its motto should be 'First creep—then walk—then run,' or in other words, not to attempt to run before getting strength in its limbs, and not to ask for that which it is unreasonable to expect." Alluding to the changes which had been agreed to in forming the Society, he observes: "The previous project, as it appeared to me and others I had conversed with, was to do as certain parties forming themselves into Associations at Calcutta and at Manchester had done, to raise an outcry against the Company's Government in India, to give publicity to all sorts of gross grievances through the medium of the Press, and parties in and out of England, with the view to get a radical change in the administration of India; to have the most, if not all, the Government patronage and privileges in the power or within the reach of the Natives of India; in short, to raise the latter *en masse* on an equality with the people of England in one grand move or sweep.

"To many, at first I appeared singular in my views of opposing such an attempt, which in itself appeared to me to be a suicidal one, in the existing state of the native mind, native ideas, and native feelings and prejudices, in relation to the Government and the governed of India. I thought, and still think, the natives generally, in their ignorance of the actual working of the Government, coupled with their habit of exaggeration, make much of little; and also know that no Government can be free from defects in its administration; and if the Company's Government does appear faulty in a few respects, there is much in it worthy of commendation in other respects. I and several of my friends have had stormy discussions on this subject."

He then quotes the following testimony in favour of the Company's administration of India, offered by Jugoonath Sunkersett, the Chairman of the Association, at the meeting, and which he states was received with much cheering, and without a dissentient voice: "The word 'grievances' has nowadays become very common; it is in the mouth of everybody. But I apprehend few have any idea of the real import of the term. Under the British Government we do not suffer any great *zoolum* (oppression, wrong). We are comparatively happier under this kind Government than we would be likely to be under any other. The anxiety of the British Government is to improve the condition of the ryots as well as of the other classes. The Government have the power to do much good, and we have many proofs they have the will also." (Much cheering.)

The author next refers to the reversal of the picture made in 1850, by Mr. Bright, in support of his motion in Parliament for a Commission to India, and quotes from Hansard, Lord Broughton's (then Sir John Hobhouse) reply, and observes, "If ever my Lord Broughton, or any other senators, need a more effectual battery to overthrow sweeping attacks, such as Mr. Bright made on the Company's Government as above, let his Lordship quote from the recorded proceedings of the Bombay Association (as published in all the local newspapers) of the 26th August 1852, and show in what light the existing Company's Indian administration has been viewed by those then and there congregated to organize the said Association, with the view to supply the wants of the people of India."

A long extract next follows from a letter which the author wrote on the death of Sir Robert Peel to "a warm friend of the Natives of India," deploring that event, with particular reference to the discussions on the expiration of the Company's Charter. I wish I could afford time to give this *in extenso*, for the author's reflections on the event alluded to, do credit both to his head and heart, and

prove

J. P. Willoughby, Esq.

5th April 1853.

prove that he is far, very far, in advance of the generality of his countrymen. In it he repeats the following sentiments, which, during his visit to this country many years ago, he uttered on the occasion of some public entertainment at which he was present, not, as he says, to purchase popularity with Englishmen, but as a faithful utterance of his own hearty conviction: "Ever since that memorable sentence, 'I glory in being a Briton,' was uttered by one of your illustrious monarchs, it has become a household word with every Englishman; and I assure the party that every native who knows how to appreciate the blessing of the British rule, says, We glory in being British subjects! for where could they have found a raj (rule) under which their life, their liberty, and their property would be so secured to them. The late Lord Haddington and the present Earl of Arundel and Surrey, between whom I sat," &c. &c.

The author apologizes for referring to personal incidents and correspondence of this kind, his object in doing so being to disabuse the minds of those who have before and recently misinterpreted him, as they prove that his present sentiments on the India question are not of recent formation. He then returns to Mr. Bright and the Manchester school of politics, observing, "Their feelings are commendable, but their zeal, or rather over-zeal, for the cause they espouse, at times blinds their discretion, and they run fierce, or (as they say in England) 'go the whole hog' in pursuit of their object without discrimination. They, therefore, form a faction." This is preliminary to a refutation of the inaccuracies of a native, named Shamut Ali, on whose authority Mr. Bright is stated in part to have grounded his attack on the Company's administration; and after a passing allusion to the memorable instance of the Manchester Chamber of Commerce petitioning against a certain impost as detrimental to the growth of cotton in India, which had been repealed at one Presidency eight years; in another, four; and in a third, two; the author thus applies his remarks to Bombay: "The 'Young Bombay,' but without the strength to maintain their stand, either on the score of information or experience, appeared to me recently to have been infected with the Manchester jaundice against the Company's rule in India; and it was indeed most fortunate some of our friends were able to nip in the bud the original scheme (as given out) of these young men, and to adopt the present one for a far different object. We ought to side with no party, but stand aloof on our own ground; think for ourselves, judge for ourselves, and then act for ourselves."

In No. 3, dated 5th September 1852, after reminding his friends and the members of the Association that "the English are in India by the conquest, not by the affections of the Indians," the author observes, "I do not mean by this that the British subjects are not happier than they were under their old unconstitutional Rajs of *sic volo sic jubeo* notoriety, or that they have any very great causes of complaint by the change of their rulers. The British Indian subjects, on the contrary, '*are comparatively happier than they would be likely to be under any other Government*,' and this I am glad has been openly avowed at the public meeting on the 26th August 1852, without a dissentient voice; but if any one knows anything accurately of the character of the people of India, he would not gainsay what I opine, that whatever amount of blessings and advantages they have enjoyed, or might yet to a greater degree hereafter be made to enjoy, in the protection of their life, liberty and property, the bulk, the mass (with small exception), would not or could not appreciate a constitutional Government at its correct standard; and this chiefly from their ignorance of the laws of the country and the forms of the Government (so foreign to all their notions) under which they virtually appear to be so well off."

The following extracts will still further illustrate the author's views, and his condemnation of the spirit of exaggeration displayed by those who indiscriminately attack the existing system for administering the affairs of India: "The Mahomedans and the Hindoos, as a body, would ever delight to talk over the exaggerated accounts of and prefer their respective old governments, with all their several singular imperfections, and in abusing in corresponding ratio the existing rule over them, they would always say, 'Oh! our Bashaws and our Rajas were of superior make; we were in their times happier to what we now are; then we had no such heavy taxation;' but if you ask them to draw a defined comparison between their past and their present rulers, or to state in what particulars the country was better managed before to what it is now, and to explain their relative causes and effects, they would either evade a direct

J. P. Willoughby, Esq.

5th April 1853.

answer to any such direct question, or go on in their fashion abusing the existing Government, without stopping on every trivial personal or desultory cause of evil; and which, whether real or fancied, they would not stoop to discuss. Individual and desultory cases of hardship there are, and that some of the people have causes of complaint I am not willing to deny; but if one would go dispassionately and disinterestedly to inquire into such, he would in the majority of instances find out, what I have often found, that much of the evils complained of have been of their own formation, and might, with safety, be attributed to either of the following circumstances; namely, their ignorance of the principles of British justice, and of the laws of the country they reside in; their want of manly independence, with which to seek redress at the proper quarters appointed to administer the same; their habit of resorting to a questionable rather than a legitimate source of justice, which they, with the utmost timidity, supplicate as a matter of favour or compassion, rather than seek it as a matter of right; their fondness for exaggeration and introducing extraneous matters, so as to confuse and confound a simple case and the authorities who have to decide thereon: they always prefer to give strong colouring to their one-sided version, without taking up or noticing the other side, and thereby grapple with their opponents' facts and arguments. I am in possession of a number of data in support of the above views, and which I shall elucidate when I shall have (as I propose hereafter) to treat in detail of the particular branches of the administration of government and other matters, with which I humbly conceive I have been to a certain extent conversant. I believe, nay, am almost certain, that the feeling of loyalty and patriotism on the part of the people of India is a virtue so exceedingly rare among them, that, render them however prosperous, it is a matter of doubt if you will secure their affections in favour of a foreign Government, of whose motives they have most exaggerated, strange and absurd notions. In the existing state of Native mind and Native feelings, it is unreasonable in the Natives of India to expect to be invested, as it is highly impolitic in the Government to invest them, at once with the gross amount of patronage and privileges which exclusively appertain to Government; every precaution seems absolutely necessary to guard against this step, and that, except by a gradation in the due course of events, and under watchful supervision, and until the people of India, by their acts of loyalty and patriotism, by their fidelity and zeal, generally manifest themselves deserving of a greater degree of trust and confidence from their employers, they could not well be entrusted with everything. There is nothing that I see which would prevent Natives of India attaining the higher offices they aspire to, if they qualify and befit themselves for the same. They never, till lately, had opportunities allowed them to have their competency tested: they are now on their fair trial to distinguish themselves; they are now selected either from their supposed intelligence or past service, to hold offices on a parity with the junior members of the Covenanted Civil Service; they are now accustomed to receive much higher emoluments than their ancestors, or they ever before dreamt of getting from Government. Prove that they are deserving of yet further advancement, and they will have it by degrees. The time, perhaps, is not yet come, but coming, and may not be far hence. There is, from what I know, every desire on the part of the higher authorities in England to pave the way for the further gradual advancement of the Natives of India. The patronage of all appointments of trust and emolument must always remain in the hands of Government. Government is responsible for the distribution of its patronage, and must, in the case of Natives in particular (for the above and other reasons), distribute the same with care and caution. To say that the Natives (I am speaking, of course, of this side) of India, generally, have qualified themselves to the standard of the people of England, and are fitted by their education and experience, and feeling of loyalty and patriotism, for all and every office of trust and emolument, however high, without discrimination, would be to affirm what is not correct; a few isolated cases will not suffice. Let the Natives of Bombay endeavour to maintain the position to which a number of them have lately been raised: they are attaining steps by degrees. Let them be neither clamorous nor over-avaricious, and not, by asking too much at once, destroy the current of good-will on the part of the authorities which has commenced to be created in their favour. This motto should be the motto of the Association, 'First creep—then walk—then run;' or, in other words, not to overleap their strength. In what way can the Natives ameliorate the prospects of

J. P. Willoughby, Esq.

5th April 1853.

of the country and the condition of the people? What is requisite to raise them on an equality with the people of England? What are they required to do for themselves? And what should and ought Government to do for them? These questions will severally form subjects of my future minutes. It was, and still is, my intention of writing a small work on some of the subjects I have mentioned."

In No. 4 of his pamphlet, dated 14th October 1852, Monackjee Cursetjee discusses the question, "What is required to augment the resources of this country, and better the condition of its ryots?" It is difficult to select extracts that will clearly convey the author's ideas on this important question; but he divides his remarks chiefly under two heads; the first requirement, he states, is, "A combination of energy and enterprise on the part of the people of India with their capital." The second, "The union and transfusion of the British capital, energy and enterprise, with the capital, energy and enterprise of the people of India." "If," he observes, "the people of India were to look less to Government, and more to themselves, in raising up capital, and combining capital with energy and enterprise, in founding and rearing national undertakings for the benefit of the country, like the people of England and America, they would outshine even the people of the United Kingdom and America. But it is hardly to be expected that the people of India, *if left to themselves, and not led by some* propelling nation, would bestir themselves in any national undertaking."

The author then publishes two letters, dated the 1st November 1850, and 25th June 1851, addressed by him to Members of Parliament in England, with the replies thereto; these were of course written long before the Bombay Association was ever thought of, and prove, I think, that although Monackjee Cursetjee differs from some of the views and opinions of those who have petitioned Parliament, he is himself a reformer, and anxiously desirous for the advancement of his countrymen. I select the following extracts; again referring to Mr. Bright's motion in 1850, he observes, "It is indeed refreshing to watch the growing interest with which the affairs of India are now beginning to be thought of and listened to in England; but it is at the same time provoking to observe, that the information at the disposal of those in and out of the senate, disposed to do good for this country, is generally defective, and, consequently, if the enterprising gentry of the manufacturing districts in England would but set to work quietly, and send out a number of intelligent, learned and scientific men to collect every information on the state, resources and wants of this country, *and that independently of the Government*, they would be the means of effecting some real good;" recommending that an Association should be formed and capital subscribed for the purpose of farming or purchasing "districts capable of being improved, and thus render England independent of America in respect to their cotton supplies (which appears to be their chief object), and obtain an accession to their imports of other East Indian produce, whereby they would reap a large profit, independently of the consideration of improving the moral and political condition of the people." He observes, "On the other hand, it can hardly be expected that the Natives of India, if left to themselves, would bestir themselves in any such national undertakings, their ideas and prejudices being generally against innovation; they are neither emulative nor as enterprising as they ought to be. Let those who think otherwise gratify me by pointing to any national work they by themselves have undertaken for the benefit of their country in this enlightened nineteenth century: the natives of India are, in fact, the most unpersevering set of beings; they would go to the drudgery of producing any amount of rough work sufficient to earn their livelihood, without waiting to finish it to perfection, and to add more to their means of comfort; and it is hence that they forego no inconsiderable advantage, in name and purse, in regard to the very staple produce of their soil—cotton, so largely exported to England and China—by not picking it clean, or cleansing it of dirt by means of a little extra labour, on new but improved principles. Tell a Hindoo that he would make his fortune by introducing the cultivation of cochineal, or by extending the plantation of the mulberry to feed silkworms upon, and he would tell you with perfect *sang-froid*, 'Our forefathers did not do it; why should we?' or, that it is a great *prachit* (sinful act) to destroy life in any form. Reason with him, that if it is thought abhorrent to destroy a worm, why does he clothe himself in silk, and thus encourage its trade? 'Oh! sir, that has been our custom,' will be his cool reply."

J. P. Willoughby, Esq.

5th April 1853.

These observations are applied to the people of the interior; but, he continues, "At the Presidency, where the wealthier and more intelligent portion of the community reside; where extensive trade is carried on independently or in connexion with European houses of agency; where, by their intercourse with Europeans, a better state of things might have been expected, and where emulation is supposed to be the ruling passion among them, the case is not very different—yes, there is some emulation there, but confined exclusively to cotton bales and opium-chests, beyond which their ambition extends not; and hence it is that we have no agricultural patrons or promoters of agricultural interests among us. There is not one, at least on this side of India, from among our capitalists, who can be called *a gentleman at large*; that is, *who is living entirely* on his farm by improving and multiplying its resources. Land is cheap, labour is cheap, and the bounty of Providence, in the periodical supply of moisture, great in the interior, yet not one of our monied men has thought fit to venture out 25 miles beyond the Presidency to embark his capital in pursuits of the kind I have just mentioned. We want a Duke of Devonshire, or individuals of like enterprising stamp, among us; for *until we shall have British energy and British capital transfused with that of this country, its amelioration in the way its best wishes could desire is almost impracticable.*"

Although, in giving these extracts, I do not endorse Monackjee's views and opinions with my entire concurrence, I cannot refrain from stating that what follows is very just: "There are three grand defects, I almost consider misfortunes, in the compound forming the Native character, and which mar the very best efforts of those who take, or would like to take, an interest in this country: First, the Natives of India are not yet enlightened enough to discriminate the great moral difference between their past and present rulers; secondly, their want of consistency, and consequent absence of confidence among themselves; and thirdly, their settled habits of looking to Government for almost every undertaking for the good of their country." After enforcing this, and looking forward to "the spread of education which Government does so much to encourage among the natives," in the course of time producing a change in the ideas of the Natives, the author very justly observes, "but whether that change be for their welfare or the reverse, time alone can testify; much depends upon the *quality, not quantity*, of the education they would receive. Enlightening the Natives on the one hand, and allowing them to remain in their debased condition, as regards their morals, on the other, might result in consequences not to be wished for." Confessing his inability to handle this vast subject, and deprecating any attempt to Christianize the natives, he adds, "But if the Natives are to be educated with the view to making them good men and loyal subjects, they ought to be placed in a right field, where their talents might be developed for their country's advantage and their own happiness, and there appears to me, I venture to submit, but one mode by which this can be done; namely, by rearing and fostering their moral as well as intellectual growth at one and the same time from their infancy, for whilst the latter is cultivated and the former neglected (as I fear is the case at present), probabilities are in favour of spoiling the rising generation; but let us hope otherwise."

His remark is equally just, that "There is no place on the surface of our globe which presents such untrodden fields to gather the richest harvest from as India. Look at its extent, variety of its temperature, and consider what vast room there is for enlarging its agricultural products. Its geological and mineral resources are scarcely yet inquired into, much less tried and tested. India abounds with all the growths of nature, visible and hidden, above and below the surface of the earth. All that is needed is, not so much the transmission of British capital as the transfusion into the minds and hearts of the Natives here of British energy and British enterprise. The machinery of our Indian Government is very cumbrous, and it is hardly to be expected that it can move with the regularity of clockwork; nor can it be expected to originate everything, undertake everything, and support everything."

The author then proceeds to advert to defects or causes beyond the control of his countrymen, to which, in a great measure, might be, in his opinion, attributed the present unprosperous state of India. Among these, he specifies the undefined nature of land tenures, the appointment of a Commission to inquire into the titles to land, and the mode in which, on its report, lands are resumed; though here, he admits, "There is much to be said for Government, that the illegal

resumption

J. P. Willoughby, Esq.

5th April 1853.

resumption of lands and exercise of other arbitrary acts were common occurrences under the past, but rare under the existing administration. There was no appeal, no redress, under the former, whilst, under the latter, appeals can always rest, and redress be ever attainable of the highest authorities, if the Natives do but know how to seek it by legitimate sources." He also refers to the exemption of revenue and other matters from the ordinary jurisdiction of the Civil Courts, and not having a competent tribunal, like that of the Court of Exchequer in England, to adjudicate such matters. He then proposes what, several years ago, I myself advocated, under suitable conditions and restrictions, the sale of land, or, rather, what I would term the redemption of the land-tax, and assigns the true reason why, although India is not more heavily taxed than under former rulers, they feel its burden more oppressively than before. For this Liverpool and Manchester have in a great degree to answer. [*] "India" (he observes) "used not only to produce its raw material, but to work the same also into goods at home, and there was a ready market in the country and abroad for their manufactures. The ports of Guzerat alone, particularly Surat, till within the last quarter of a century, used to export and to supply Brazil and other coasts of Asia and Africa with an immense amount of piece goods, principally domestic. There is an entire change; instead of every district abounding with piece-good manufactories, as was before, there are now districts without any; not a bale is now exported from Guzerat to Brazil, and scarcely a soul arrives from Brazilian coasts for the purpose; not only our Indian markets, but others dependent on the same, having been so overstocked with British piece-goods, and those so cheap, that it would be impossible to compete with them. The manufacturers of England get our raw materials, work them off cheap, and yet make a profit: whilst the manufacturers here are forced to give up their avocations in their several lines. The people here had, before, double sources of income and profit from producing raw materials, and from working the same within doors. The combined sources of profit enabled them, after payment of Government dues, &c., to reserve a surplus, which went on accumulating year by year, and the circulation of the increased wealth of the manufacturers and traders in the country rendered its inhabitants contented and prosperous." The author then includes in his catalogue of evils the absorption of the Native States, and the consequent decrease of consumption among them of goods and merchandise which were before requisite to maintain the pomp and grandeur of their Courts, and which used in former times to be principally supplied from the country manufactories; the raising of loans for the wants of the State in India instead of in England; the excessive rate of interest prevailing, especially among the agricultural and labouring class; and, lastly, he quotes, with approbation, Colonel Grant's pamphlet on "the Growth of Cotton and Railways in India," in which some of the evils he points out are discussed.

Passing by the reply of the Member of Parliament to whom the above letter was addressed, and merely referring to a second letter, apparently addressed to the same person, in which Monackjee Cursetjee intimates his intention to collect and study "a number of facts illustrative of the position and prospects of this country, with the view of enabling him to take a part in the forthcoming discussion on the renewal of the East India Company's Charter," which, "with some modification, and supplying a few wants," he is of opinion might prove beneficial, he concludes this portion of his pamphlet with the following observations:—"Subjects like the above, and others of like tendency, come within the legitimate scope of the inquiry which the Bombay Association, or any other party interested in the welfare of this country, should set about and discuss upon, with the view to represent, either to the authorities in India or England, the real wants of the people of this country. In subjects like these the Natives in general, and the Ryots in particular, would naturally feel interested. Such, in fact, was the fundamental object of the Bombay Association, as set forth in the opening and the closing address by its chairman on the occasion of its inauguration. But I have lately perceived an inclination, on the part of some of its managers,

---

[*] In 1850–51 the total imports at Calcutta were about eight millions sterling, of which England supplied about five millions and a quarter, or 66½ per cent., chiefly in hardware, cotton piece goods, woollen stuffs, salt, liquors, and articles of luxury. *See* Wilkinson's Report on the external Commerce of Calcutta for 1850–51. The proportion of imports from the United Kingdom at Madras and Bombay is probably about the same as at Calcutta.

J. P. Willoughby, Esq.

5th April 18

managers, to leave the local wants and local Government measures, of which the people may be supposed to understand something, aside, and to take a fling at demolishing the machinery of the Indian Government in England; namely, to do away with the India Board and the Court of Directors, and to create a new Court for India, to be composed of a number of handsomely paid members, to be elected, not by the present proprietors of the East India Stock only, but also by people in India, Natives and Europeans, who hold Government promissory notes and Government chartered bank shares of certain value, and (taking care not to omit young Bombay especially) persons qualified by education, as the graduates of the colleges, and by proxy, &c. &c. A number of petitions to Parliament have been, within the last month and a half, in the course of being 'cooked up,' containing some such prayers. If the members of the Bombay Association, and others, really believe that a petition to the high authorities, containing such prayers, and others of like tendency, are not selfish; that doing away with the Board of Control and the Court of Directors, and making a radical change in the working of the Indian Government in England will really be for India's good; that the people from whom the petition is professed to be sent, do know what is the machinery of Indian Government in England, or how and why that machinery has been created as it now stands; or if the members of the Association and others can conscientiously certify that the people of India feel any interest in or care anything about the existence or extermination of the India Board, and the India Directors in England, the Bombay Association, and others interested in it, are bound in duty to support such prayers by all their might and main. But, on the other hand, if they, or any of them, believe otherwise, in all or any of the aforesaid matters, they are equally bound to make a bold stand against sending in petitions containing such prayers, which convey no Native feeling, written by no Native, and about which the Natives know nothing, and care nothing. Before finally drawing up a petition to be sent to Parliament, let it be circulated among the members of the Bombay Association generally, and of its managing committee particularly. When I see it, I will, if I have anything further to say to it, make it a subject of a separate paper."

I have already stated, that No. 5, of Monackjee Cursetjee's pamphlet, which is without date, was received by me after I had been examined by this Committee. It confirms the information which I then stated had reached me, of serious differences of opinion having arisen among the members of the Bombay Association. In fact, the author asserts, "Nearly a moiety of the original members of the managing committee of the Bombay Association, it seems, have thought as I did, of the strength and capability of that body to produce any amount of substantial good for the benefit of this country, and have consequently resigned their respective offices. In taking farewell, therefore, of the Association, the author intimates it to be his intention to publish his future 'ideas,' independently of that body. But he also refers to a newspaper discussion which the printing of his pamphlet had originated, and to the sensation which it had created 'among these young folks,' the would-be members of Council and what-not of Bombay, whose schemes of self-aggrandizement, and whose pretensions at blustering on subjects of so much importance, but without the requisite amount of information, knowledge and experience of the same, I endeavoured to describe in their true colours."

After asserting that the Association had departed from its originally professed object, which, in the language of their President, Jugonath Sunkersett, was "to ascertain and note the wants and wishes of the people living under the Government; to consider what measures are calculated to improve their condition, and to submit *the results of these inquiries* to the local Government and to the authorities in England," the author proceeds to notice the storm of censure and attacks on his character "through the medium of that hired agency" (which is a disgrace nowadays, in Bombay), the discreditable portion of the Press, which his bold and open opposition to the proceedings of the Association had subjected him, and especially to defend himself from the imputation of being a Government friend, "a Government partisan and an expectant of Government." I give his reply to his countrymen on this point, because undoubtedly, if it can be shown that Monackjee is a partisan, his testimony is unworthy of little, if any, consideration.

"My pamphlet on its outset has the appearance of being written by a Government apologist, which I neither am nor desire to be. No Government has been,

J. P. Willoughby, *Esq.*

5th April 1853.

been, or can ever be, free from defects in its administration; but to pick up any of the constitutional defects in the existing Indian Governments, and work them up with effect, *pro bono publico*, would require the possession of a store of information and study of *puckamooda* facts, which those forming the Association have not, and never professed to have, before they took to trumpeting their doings to the world. There are several Government measures which at the first glance would appear to be open to reproof; but these, if carefully inquired into, in the majority of instances, would be found to relate to individual cases, which must be treated on individual grounds, and remonstrated against by individual petitions, and ought not to be mixed up in discussing the general policy of Government, with the view to effect a radical change in the very constitution of that Government. The Natives in general have not learnt, and this 'Young Bombay,' in particular, require yet to learn, how to discriminate public from private questions, affecting rights of nations and rights of individuals. I have had, and still have, no trivial cause to complain of the acts of our local Government, and which I have done in no mistakeable language in my correspondence with the authorities. Were these to have influenced my feelings, in joining with a herd of ignorant Natives, who take a delight in throwing their handful of dust on Government, merely for the sake of its display, I should stand the chance of being equally charged by one party as being vindictive, and my sentiments the sentiments of a disappointed man, as I have been by the other party of being a Government friend, Government partisan, and an expectant of Government; thus imputing motives which (Heaven is my witness) in no way propelled my feelings in taking my stand in opposition to the views of those forming the Association. I have however found, and since clearly shown in the course of the discussion among the members of the managing committee, that they have been acting in ignorance of the subject-matters they undertook to discuss, and were put up to by others, whose views they would blindly adopt, and had, in fact, actually adopted; and I considered it a duty I owed to my Government, my country and myself, to have their mask torn off. I have not spared Government or its officers (though the latter may have been my personal friends), and I will not spare them when writing or speaking of individual cases (my own, or others), in which the acts of the authorities deserve being reprehended; and as I shall continue my 'ideas' in a subsequent part or series of papers, pointing out what Government should do for the people, and the people for themselves, then I will as tersely show the defects of the former, as I have at the outset of these papers shown those of the latter. I have not been, and am not an enemy to any man or set of men forming themselves into a body for any patriotic object; those who engage in such a cause deserve well of their country. I wished well of the Bombay Association, because the professed general object with which it was inaugurated was far from being questionable, or I should not have consented to being enrolled among its managing committee. But when that body began to waver from its originally professed object, and courted secrecy instead of publicity for its doings, I at once severed my connexion with it. Several others, on like grounds, I believe, did the same. All I have endeavoured by words and in writing to impress on the minds of those connected with or interested in the prosperity of the Bombay Association, was to prevent their leaping beyond their strength, to meddle in matters of which they might be supposed to know something; or, in other words, to see with their own eyes, hear with their own ears, and then judge for themselves, instead of seeing (as they have done) by other people's eyes, hearing by other people's ears, and being led by other people's views."

The following extract confirms me in the opinion that the Petition which has been presented to this House is more European than Native, and conveys European rather than Native ideas of the changes and reforms required in the administration of British India: "Nothing could have better illustrated the fitness of my above observations, nothing the correctness of the data on which I grounded them, than that Heaven-born Petition of theirs to the British Parliament which has so lately appeared in the newspapers, and been commented upon in their leading columns. A selection of the 'Spirit of the Press' is appended to this. This Petition professed to be from the Bombay Association, and its other inhabitants; it took two months to have it suitably prepared and properly cooked by a number of European gentlemen, and others who had a hand, act or other advising part in its being got up. The inhabitants of Bombay in general know nothing about it, whilst the members of the Association in

J. P. Willoughby, Esq.

5th April 1853.

particular had been kept in ignorance of its contents till a quarter of an hour before the same was read and adopted at the meeting on the eve of its transmission to England. The mode and manner of getting up Petitions and Addresses generally, the Petition in question to Parliament in particular, and the several objects sought in that Petition by a number of inhabitants of Bombay, shall form the subject-matter of the new series or second part of these papers."

In an Appendix (A.), the author enters into a more detailed account of the origin and progress of the Association; his reasons for joining it; its professed objects in the first instance; the admissions of the chairman and others at the inaugural meeting, that the Government of British India, as now constituted, has both the power and the will to do much good; are anxious to improve the condition of the ryots, as well as of the other classes; and that the Natives "are comparatively happier under this kind Government, than they would be likely to be under any other;" sentiments received with unanimous cheerings, and without a dissentient voice. He next describes how some of the members of the managing committee, a few days after that meeting, "began to break through the very objects of the Association, and commenced upon a course of procedure diametrically opposed to what its chairman and others publicly professed, and what was expected from them; and how, when they endeavoured to shun all publicity of their doings, and courted secrecy instead of getting enlightened (they having openly professed their benightedness), as to the existing state of things at and out of the Presidency, in relation to the absolute wants of the people, by first inquiring into the same, they attempted to rush on a higher game, by suffering themselves at once to be swayed by the views and opinions of others; by fraternizing with the views and opinions emanating from the Calcutta Association and other avowed opponents of Government for political objects in England, as echoed in newspapers; in short, when they overleaped their strength and their bounds of discretion in treading on strange ground, speaking of matters of which the committee, with the exception of one or two members, were in profound ignorance, and of which the Natives knew nothing, and cared nothing, and in asking what reasonably they could not expect, or maintain if they had," nearly a moiety of the original members of the committee threw up their offices one after the other, in common with himself. The author, after this, enters more at length into his own reasons for seceding from the committee, and publishes a correspondence between the chairman and himself, commencing the 10th of September 1852, only a fortnight after the Association was formed. It is difficult to extract from this, though it is well worthy the perusal of those who are desirous of forming an impartial judgment upon the weight due to the petition, a copy of which has been furnished to me by this Committee, and headed "Petition of the Members of the Bombay Association and other Native Inhabitants of Bombay." I shall only draw attention to two passages of this correspondence; the first, because it establishes that even the chairman himself did not altogether approve of the proceedings of his younger and least inexperienced, though zealous, colleagues; the second, because it confirms what I have stated in my evidence, that the movement at Bombay originated with some of the students of the Elphinstone Institution.

"I received late last night a circular containing a fresh specimen of the young men's views, or the first specimen of the views of the executive committee; namely, they consider their number (already 15) small enough, and desire, or rather resolve, to recommend the same to be increased to 25, chiefly from the young men; and I am pleased you have so justly recorded your opinion, in which I participate, '*That the business of the Association cannot be expected to be conducted with prudence and advantage, even in the first instance, by young men who have not yet left school and seen anything of the world.*'" This quotation is written by the author in *italics*, and in capital letters. And, again, objecting to the executive committee altogether, and, of course, to the proposed addition to its strength, the author observes: "The executive committee, as it is now composed, principally of the young men, and on the strength of whose working the Association, as it would seem (perhaps incorrectly), has earned for it the soubriquet, '*Bombay Schoolboy Association*,' and by adding more '*young men of inexperience*,' as you have very justly remarked, '*would never suffer the business of the meeting to be conducted with prudence and advantage*,' and the Association would justly merit the epithet which others merely now jocularly apply to it. The

The thing itself looks ridiculous enough, but the farce should go no farther by adding to the strength of the 'young men best company,' which, to all appearance, the executive committee now is."

I pass by the author's remarks upon an undue liberty taken in expunging certain passages from a speech he made by the secretary, "still undergoing his tuition at the Elphinstone Institution." This Appendix closes with three letters addressed to the chairman regarding the draft of the Petition. The following extract will suffice to show how little that document is worthy of being regarded as an index of the opinions and feelings of the Natives of Bombay, or even of many of those who signed it. It is worthy of remark, that the meeting referred to was held on the 14th of October, and that the Petition is dated the 28th October 1852. A fortnight therefore, only, was allowed for its circulation and consideration, and some of the names attached to it, I am informed, are those of persons residing in the Deccan.

"A week or ten days after the date of the above letter to the chairman of the committee, a further circular was sent round, calling a meeting on the 14th of October, to discuss the draft Petition (so often talked of, but never discussed). We met, accordingly, and on my reading the two separate minutes, pointing out the inexpediency of getting up petitions in such a manner, without its being previously circulated to any of the members of the committee, and without each subject therein embraced previously discussed and adopted at their meeting; and finding in the course of the discussion which we thereon had, that out of eight members then present, six knew nothing of the most prominent features of the Petition, &c. &c., I declared openly that 'their farce could go no further,' if they were bent upon having such subjects carried on in their own fashion. On this I could no longer allow myself to be connected with the managing committee, and wrote out the memorandum already above quoted, wishing to have nothing more to do with it; and within a few days afterwards I found out that several other members thereof also sent in their resignation." The note of resignation was as follows: "I herewith transmit to the Bombay Association my paper, No. 4, of the series (part of which I read last night at the meeting), and with this I beg to add, my connexion with the Association ceases. The reasons which propel me to resign my office as one of its managing committee shall be stated at length in a paper for the information of my friends, a copy of which I shall not fail to forward to the Association, not as its member or as its evil-wisher, but (as I have hitherto been) its well-wisher and friend. *Monackjee Cursetjee*, Villa Byculla, 15th October 1852."

There are two other Appendices, (B.) and (C.) The first consists of letters addressed by the author to two of the newspapers of Bombay, defending his conduct and proceedings. The second is headed "Spirit of the Press," or extracts from the papers commenting on the proceedings of the Bombay Association, and the Petition presented in their name to Parliament. These also are deserving of attention, but I shall confine myself to one extract, containing the opinion of the "Friend of India" on the Petition, not only because that paper is not likely to be influenced by party spirit and local feeling, but because in my opinion it is the best paper published in India, and celebrated for its impartial tone and patient research, and for its unwearied advocacy of measures of moderate reform, and for the enlightenment and advancement of the people of India.

"This is the entire sum and substance of the Petition, and we need scarcely observe that it is evidently of English origin, for, with the exception of a clause condemning the Law Courts, and the request that the Natives should be admitted to the highest offices, there is nothing that is native about it. There is nothing about the revenue taxation, or the interests of commerce, or the police system, or the judicial institutions, and their practical working. It is a mere essay on certain portions of the present system of Government, particularly dry, and in some parts a little extravagant. In short, it creates the impression either that the petitioners are not aware of what their countrymen really require, or that there are not grievances at all in the Bombay Presidency. In either case the Petition is not likely to have any extraordinary weight. Its value, we imagine, will be found to consist chiefly in the fact that a great Association at Bombay, after three months' discussion, could find no more practical grievance to complain of than the exclusion of the Natives from a seat in Council, the high salaries paid to certain officers, the want of means of communication, and the necessity of vernacular education.

J. P. Willoughby, Esq.

5th April 1853.

We do not mean to affirm that the two latter blessings are undeserving of the efforts of the Association, but the want of them was felt before, and the Native view of the question of British Administration is not therefore distinguished, either by originality or force of argument. We fear the members of the Association have suffered themselves to be too much Anglicised, and have thereby forfeited the advantage which their thorough local knowledge would have afforded them upon other topics. It is scarcely probable that 31 paragraphs like these, containing scarcely a single definite proposition, or a full explanation of a single grievance, will receive much attention from the British Legislature."

An explanation is perhaps necessary, why I have troubled the Committee with this long and detailed answer to the question put to me. I have done so, however, because it appeared to me very desirable to afford the Committee data for judging how far the Petition from Bombay, and others of a similar nature, ought to be regarded as a true representation of the ideas and feelings of the Natives of India. If, on the one hand, they are to be taken as a faithful index of the Native mind, then is India ripe for a very different charter of administration than what I humbly conceive her real state, and the interests of both countries (and these are inseparable) require. But if, on the other hand, they are regarded merely as conveying the sentiments of the Anglicised section of the Native community at the Presidency towns, aided by their European friends and well-wishers, they will of course be viewed in a very different light, and be treated accordingly. I have, therefore, thought it would not be unacceptable to the Committee to be furnished with the views of a Native gentleman of candour and intelligence upon the subject, and who cannot possibly be charged with being influenced by any bias against his countrymen.

The Native community of Bombay is certainly as far advanced as that of any other part of India. They have not, it is true, as yet altogether cast off that spirit of dependence on the governing authorities, which is one of the chief characteristics of India. They are, however, gradually advancing in capacity and intelligence, and have during the last 30 years made noble efforts in the cause of education; witness the Elphinstone Institution, the Grant Medical College, and the numerous scholarships they have endowed in honour of those whom they esteemed to be their benefactors. All these have been established within the last 30 years by the Natives of Bombay, aided by the subscriptions of the European community and the liberal patronage and support of the local Government, and of the Honourable Court of Directors. And although I presume to question the capacity of the students of the Elphinstone Institution to become legislators; and although I cannot regard them as the most accurate exponents of the wants and wishes of their country, I hope it will not be understood that I mean to cast any reflection on their well-intentioned efforts; on the contrary, I view with much satisfaction the zeal and industry they display in the pursuit of knowledge; and I regard the part they have performed, in regard to the Petition which is the subject of my remark, as the result of a very natural though immature yearning for honourable distinction and advancement in life.

And I would conclude with the remark, that although the petitions from India cannot be regarded as pure emanations from the Native mind, it by no means follows that they should for this reason be rejected as unworthy of consideration. On the contrary, they contain some excellent suggestions, and point out some admitted defects in the existing system of administration, and I may add, that from my seat in Council in Bombay, I have long ago advocated some of the former, and alluded to some of the latter in view to their amendment. I may, in particular, refer to the subjects treated of in the 11th, 28th and 30th paragraphs of the Bombay Petition.

3181. Earl of *Ellenborough*.] What was the grievance which Monackjee Cursetjee supposed himself to have in consequence of some conduct on the part of the Government?

He complains of two grievances; the first occurred some years ago; on the discovery of certain frauds in the Customs Department in Bombay, connected with drawback duties, negligence was imputed to Monackjee Cursetjee in having signed papers, under cover of which part of the frauds had been committed. There was not the slightest slur upon his honesty and integrity. I am speaking from recollection, but in consequence of that he lost his situation of Assistant Collector of Customs; but shortly afterwards he was re-employed by Government,

J. P. Willoughby,
Esq.

5th April 1853.

ment, and in a superior appointment. And again, his second grievance occurred since I left India. In consequence of the New Small Cause Court, which has been established at the three Presidencies of Calcutta, Madras and Bombay, the Small Cause Court which formerly existed under the name of "the Court of Requests," was abolished, and Monackjee, and another very intelligent and respectable native gentleman, of the name of Bomanjee Hormusjee, lost their situations. On that occasion, I understand, the European Commissioner and the clerk. Messrs. Johnson and West, have been allowed to retain, while in India, a moiety of their pay, besides being provided for in the New Court. The Native Commissioners, however, have been discharged merely with a gratuity of 6,000 rupees, and Monackjee Cursetjee not being able to reconcile why that difference should be made in the case of the European and the Native Commissioners, considers himself aggrieved.

3182. Has he been since compensated in any manner for the loss of those offices?
Both he and his colleague, Bomanjee Hormusjee, received a gratuity, I believe, of 6,000 rupees each.

3183. But since that, has he received an office or any further compensation?
Not to my knowledge.

3184. The pamphlet from which you have read extracts was originally written in English?
It was printed in Bombay in English.

3185. Do you apprehend that it was translated into the native languages?
I have no reason to believe that it was.

3186. Was the Petition from Bombay ever translated into any native language?
Yes, it was, for I find it stated by Monackjee Cursetjee, in his pamphlet, at page 60, "The Petition has not yet been seen by the members of the Bombay Association, nor circulated for approval among the members of its managing committee; it was, as published in one of the native newspapers, up to Wednesday last, with an English gentleman who had the preparing of it."

3187. It was not sent into the Mofussil and circulated there in the native languages?
I am not aware that it was.

3188. So that, in fact, it proceeded altogether from persons conversant with English?
Yes; except that I have heard in this room that there are some of the signatures of the Mahratta Chiefs of Poonah attached to it; if so, it must have been sent to them; but I am certain, from my knowledge of them, that, generally speaking, many of the subjects treated of in the Petition must be beyond their comprehension.

3189. Lord *Monteagle* of Brandon.] All that you say about the circulation of the Petition is from hearsay?
I derive all my information from this book of Monackjee Cursetjee, and from the newspaper discussion to which it has given rise. This book has created a very warm controversy; one portion of the Press siding with the author of the book, and another siding with the members of the Bombay Association opposed to him.

3190. You do not give what you have stated upon this subject as evidence that can be relied upon as having come within your own knowledge?
No; but if Monackjee Cursetjee had stated anything that was not the truth, he would have been exposed by the Press. If any check were necessary, that of the Press must have been a very considerable and efficient check.

3191. You are aware that the Petition in question was prepared during the time Sir Erskine Perry was at Bombay, and that he was cognizant of the whole course that was taken upon that occasion?
I believe Sir Erskine Perry was at Bombay when the Petition was prepared. I should, however, say that a Native, a member of the committee of management, if he was giving honest testimony, and had no motive to pervert anything

J. P. *Willoughby*, Esq.

5th April 1853.

that had occurred, would be more likely to know and to state what had actually occurred amongst themselves than any European gentleman.

3192. But in the statement of the Native, he informs us that he very soon quitted the Association, because he disapproved of it?

The Association was formed on the 26th August 1852. The draft Petition was discussed at a meeting, at which Monackjee Cursetjee was present, held on the 14th October 1852. Monackjee's note withdrawing from the Association, in consequence of his not approving of the Petition, or of the mode in which it was prepared, is dated the 15th October, and the date affixed to the Petition is the 28th October 1852.

3193. But as to what occurred after he quitted the Association, which do you think is most likely to be correct, the statement of a Native who had differed with the committee, and had quitted it, or the statement of the late Chief Justice who was at Bombay at the time?

Of course the evidence of the Chief Justice as to what passed within his personal knowledge, under any circumstances, would carry everything before it. In my previous answer, I have referred to dates, showing that Monackjee Cursetjee did not withdraw from the Association until after the Petition had been prepared and discussed.

3194. Earl of *Ellenborough*.] Are you aware whether the subject of the Bombay Petition, and of Monackjee Cursetjee's pamphlet, has been at all treated in the Native Press in Bombay?

In a previous answer I have quoted a passage from the pamphlet, stating, that the Petition, as prepared by an English gentleman, was published in a Native newspaper before it had been seen by the Association, or approved of by the managing committee.

3195. Is there any extensive circulation of any Native newspaper there?

I do not think there is any extensive circulation beyond the Presidency.

3196. Not in the Mofussil?

No.

3197. Is there at the Presidency?

There are one or two papers edited by Parsees, written more particularly for that intelligent section of the community, and no doubt these papers are extensively circulated amongst the Parsees; but the papers I refer to are the "Janie-Jamsheed" and the "Chabook." I am not aware of any particular paper in Bombay that has general circulation.

3198. Is that newspaper of a commercial character, or political?

It embraces every subject.

3199. Is there any attempt through the Press to act upon the political opinions of the people, either at the Presidency or in the Mofussil?

There are some very strong articles against the Government occasionally—(I refer in particular to a paper called the "Chabook")—not written with the specific object of exciting the people of the Mofussil against the Government, though they, no doubt, have an injurious effect already; and they will have still greater as their circulation increases, as I presume, by the spread of knowledge among the people, it will do. I am in favour of the continuance of a free Press, but I would strive to give it a proper direction. I am friendly to the publication of the truth, whether for or against Government. The evil I would wish to see corrected is that constant misrepresentation and perversion of the acts of Government now practised, and which is never noticed or contradicted. The Government never condescends to notice this, and must, I think, be damaged in consequence, in public opinion. The case is not without difficulty, but should be grappled with. The Government is more to blame than the Press, or rather, I should say, the respectable portion of the Press, which most frequently errs from ignorance and from want of the information which the Government records in many instances afford, and which in the large majority of cases might, without difficulty or any bad consequences, be afforded. The misrepresentations of the Press in India are frequently repeated in the Press of England, and in this way the evil I refer to is augmented.

J. P. Willoughby, Esq.

5th April 1853.

3200. Are articles translated from English newspapers when they are directed against the character of the Governor or any other persons in authority?

I never was in the habit of reading the Native papers, and therefore any information I can give upon that point would be of very little value. I have no doubt many articles are translated from the English Press into the Native Press.

3201. Are you aware whether the Native Princes, under the Bombay Presidency, make themselves acquainted with articles in the English newspapers by means of translations?

I have heard of such occasionally.

3202. Did you not think it a matter of importance to ascertain whether there was an attempt to act upon the minds of the people by means of the Native Press?

I have no doubt, if it had come to the knowledge of the Government that there was any systematic attempt to create disaffection, they would have inquired into it, and have reported it to the Government of India, or have adopted such other measures as might be practicable to check an evil of such magnitude. As I have already stated, I think the Government is in error altogether with respect to the Press: it allows its best actions to be misrepresented, and never condescends to give any reply, or to cause any reply to be given, or the truth to be published. "Why (asks a distinguished Indian functionary) should the seeds of disaffection and disloyalty be sown by our own hand, in a soil well prepared to receive lessons of order, and impressions favourable to the permanence of British rule?"—The India Question in 1853, by H. T. Prinsep, Esq.

3203. Although that course may be taken in the town of Bombay with reference to publications in English, which circulate only among the English, do you think it is safe altogether to neglect the Press as regards its influence upon the natives?

I think it ought to be the duty of the Government to watch the Press, and to see that the liberty of the Press is not taken an improper advantage of; according to my experience, however, the Governments of India are very averse to interfere with the Press: a free and unrestricted discussion of public measures and the acts of public men is exceedingly beneficial; but private character is not unfrequently assailed by the discreditable portion of the Press, and, I regret to add, with impunity.

3204. Did you never make it the subject of inquiry to what extent there was any circulation of Native newspapers?

I did not; at Bombay it is the duty of the Secretary of the Government in the Persian Department to bring to the notice of the Government any articles published in the Native newspapers requiring in his opinion consideration.

3205. *Lord Privy Seal.*] Are there any means by which such a document as a petition professing to come from the Natives in Bombay could be circulated and brought fairly under the notice of the people in the Mofussil?

I am not aware of any.

3206. Earl of *Ellenborough.*] If that document, or a part of it, were translated, and sent into the Mofussil, and persons going to and fro about the cantonments, and the large stations became possessed of it, do not you think it would become a subject of conversation in the bazaar?

Probably it might, especially with those who were more intimately connected with the European portion of the community; as yet, however, such subjects are very little thought of or discussed in the interior; at the Presidency towns, the Natives have undoubtedly advanced very much within the last 25 or 30 years.

3207. Although the Natives read and write very little, do they not talk a great deal; is there any subject which is not discussed in the bazaar?

I very much doubt whether the subject of abolishing the Court of Directors and the Board of Control, and subjects of that nature, are ever discussed in the bazaar at all.

3208. Would it not be very much discussed in the bazaar if any person took the trouble of circulating a petition upon the subject?

P. Willoughby, Esq.

th April 1853.

The first thing they would probably ask would be, who the Court was, and who the Board was.

3209. Earl of *Albemarle.*] What is the estimation in which the Sudder Adawlut Supreme Court of the Company is held by the Civil Service in India, is it held in high esteem by the Civil Service generally?

When I was before the Committee on the 18th of March, I gave my general opinion of the Judicial Administration of the Bombay Presidency, and not in the most favourable terms. With regard to the estimation in which the Sudder Court is held by the Civil Service, it would be difficult to answer that question, because at least three-fourths of the Civil Service are, more or less, under the control and orders of the Sudder Court. I have frequently heard complaints of a too minute interference with the decisions and proceedings of the Courts below, but then these proceeded from parties whose conduct it was the Court's duty vigilantly to watch and control.

3210. *Lord Privy Seal.*] It may be said that the Sudder Adawlut itself is part of the Civil Service?

It is part of the Civil Service; the Judges are selected from the Civil Service; it is the superintending and controlling power over all the Judicial Administration of the Presidency.

3211. Earl of *Albemarle.*] Are not the Queen's Courts much more popular with the Natives than the Company's Courts, either the Adawlut or the Zillah?

Certainly not, in the interior; and I doubt whether they are very popular even at the Presidencies; for certain reasons, and in a particular class of cases, the Queen's Courts are popular with the community, especially the European portion of it, because they operate as a salutary check and control upon the other authorities, but it is certainly not popular with regard to expense; the expense of the Supreme Courts in India, I have reason to believe, is enormous, though there is no doubt this has been considerably reduced of late years.

3212. Have you had any instances in which members of the Civil Service from Bombay have been removed from the Revenue Service and made Judges without previous training?

I was asked that question the last time I was here, with reference to the Sudder Judges, and I replied then that I could recollect only one instance that occurred in my time of a person appointed to the Sudder Court, who, previous to his appointment, had been Judge but a short time; and I added, that he remained in the Court only for a brief period; but with regard to the situation of Zillah Judges, I have no doubt instances have occurred of Revenue servants, who, the Committee is aware, exercise magisterial functions, having been transferred to the Judicial Department; I believe, however, this occurs much less at Bombay than in any other part of India, because the Judicial and Revenue branches of the service are kept more distinct; there is, however, still much room for improvement in this respect.

3213. Do you know instances in which Civil servants have been appointed to judicial situations because they failed in the other department?

I should be sorry to think that so objectionable a principle has ever been acted upon, and avowed by the Government; it may have been said outside, "Oh, he is not fit for the Revenue Department, and therefore he is made a Judge," but I am certain that the Government never acted upon that principle, at least, not to my knowledge: the Government is obliged to make the best use it can of the materials at its command; at Bombay in particular, the number of servants is smaller, and the field of selection more confined than elsewhere; and as in all bodies of men there must be men of mediocrity, men are occasionally raised to the Bench, as they are also in the Revenue line, who do not come up to the standard that is desirable.

3214. *Chairman.*] By what authority is the law interpreted in doubtful cases in Bombay?

When the Elphinstone Code was compiled, the Government reserved to itself the power of interpreting the law for two years, after which it was vested in the Judges of the Sudder Dewanny Adawlut; and although the legislative power has been taken away from the subordinate Governments, the power of interpretation still continues in that Court, and I venture to think that this is objectionable.

The

J. P. Willoughby, *Esq.*

5th April 1853.

The present system is, that wherever a doubt arises upon any point, not only in the Sudder Courts but in the Zillah Courts, the Judges of the Sudder Adawlut issue what they call a formal construction or interpretation of the law, and that is printed, and becomes of the same force as the law itself; the result is, that the constructions are very often conflicting, one Court over-ruling the construction of another Court, and within my experience I have known their constructions to be contrary to what was the intention of the Legislature; I mean that the law has been defeated by erroneous interpretation; I will give an instance. The Acts for the suppression of Dacoitee and Thuggee were almost rendered ineffectual and inoperative in consequence of the misconstruction put upon them by the Sudder Court at Bombay. I believe that since I left India that has been amended by a new enactment. In the words of an able writer, "As little as possible should be left to the interpretations of private judgment and the wisdom of Executive Courts."

3215. Earl of *Ellenborough.*] If the Bombay Government thought it a defect that those rescripts of the Court had the effect of law, why did not they propose a draft of a law to the Supreme Government for the purpose of rectifying that?

Although I have expressed my opinion to that effect, it does not follow that the Government adopted that opinion; but I will give what appears to me to be a better expression of the right principle than any I can give. The Law Commission pointed out this defect, and recommended what I think ought to be the change, and if the Committee will allow me I will read a short extract. The Law Commission, in submitting a draft of the new penal code, observe, "The power of construing the law in cases in which there is any reason to doubt what the law is, amounts to the power of making law; on this ground the Roman jurists maintained that the office of interpreting the law in doubtful matters necessarily belonged to the Legislature: the decisions on particular cases which we have annexed to the provisions of the code resemble the imperial rescripts in this, that they proceed from the same authority from which the provisions themselves proceed."

3216. Lord *Monteagle* of Brandon.] What was the date of that recommendation of the Law Commission?

I am sorry to say I have not made a note of the date.

3217. Earl of *Ellenborough.*] Did the Government of Bombay on any occasion send a draft Act to the Supreme Government, for the purpose of making any alteration in the Elphinstone Code?

I cannot call to mind any particular instance in which a draft Act has been sent to alter the code altogether. I stated, the last time I was here, that whenever any exigency arises, the local Government are in the habit of sending draft Acts for consideration, and probably many of those draft Acts may have affected portions of the code.

3218. How have those draft Acts generally been received; they have had immediate attention, I presume; have they usually been adopted or rejected, or materially altered?

I do not think they have been so frequently altered as to be matter of complaint; but I have known cases in which the local Government have thought that alterations have been introduced at Calcutta, which, when the law came into effect, partially defeated the object for which the law was applied for; but not often.

3219. *Lord Privy Seal.*] Has there been much delay which could have been avoided on the part of the local Government?

No, I cannot say that there has been; sometimes I have no doubt it has appeared to the local Government as if a long time was taken in promulgating a law which they have had great interest in having promptly promulgated; but nothing to that amount which would afford ground of reasonable complaint. The necessity, in all cases, of referring to Calcutta Acts of legislation, of course always occasions more or less delay.

3220. Earl of *Ellenborough.*] Were those alterations made without previous communication with the Bombay Government by whom the draft law had been proposed?

I cannot exactly say; but I think occasionally they have been; I am however quite certain that in some instances the proposed law has been altered or modified contrary to the opinion of the local Government.

3221. Do you recollect that you once got a law by return of post?

I have some idea of it; but I cannot quote the particular law. The Government of India can on emergency suspend the rule which ordinarily obtains, of allowing a considerable interval to elapse between the publication in draft and the final passing of a law; that interval is allowed to give time for consideration, and an opportunity for offering objections.

3222. *Chairman.*] What is your opinion of the system of appeal in India?

I think the system of appeal is allowed to too great an extent.

3223. How would you simplify it?

The evil at present, in my opinion, is, that it favours the rich, and is adverse to the poorer suitor, and that it promotes litigation among a people who are proverbially litigious. The appeal is not confined to once or twice, but is permitted from one Court to another, from the lowest Court up to the highest; besides regular appeals, special appeals are in certain cases also allowed, and likewise reviews of judgments; in fact, the present system opens a wide door for the wealthy man's means being brought to bear against the poor man. No doubt the system has originated in the great principle which pervades every branch of the Indian Government, that is, the check upon check system adopted from an anxiety to do right.

3224. *Lord Privy Seal.*] Is not that an evil to a great extent necessarily incident to the nature of things in law proceedings, that a rich man must have an advantage over a poor one?

Certainly to some extent it is; I would not of course deny the right of appeal altogether, but I would limit it, especially after an improved system of judicial administration has been, as I hope it will be, adopted. Here also I adopt the sentiments of a writer I have already quoted: "The present principle of appeal should be so far modified, that Superior Courts should be directed not to retry the case, as they almost invariably do. They should remand it for further evidence or explanation, call for inquiry on obscure points, reverse at once where the decision is against the law, or in the teeth of the recorded testimony, but they should not, where everything is done with correctness and formality, reverse a decision, because their estimate of the precise value of the written evidence happens to differ from that of the officer before whom it was both spoken and written down. Lastly, we desire a distinct recognition of the true and just principle, that every Judge should be a selected officer. This is the key-stone of the whole edifice." —Calcutta Review, June 1850, p. 390.

3225. Lord *Elphinstone.*] Does not the expense of the stamp operate equally as a hardship to a poor suitor when opposed to a rich one?

Yes, of course, each has to pay the same.

3226. Lord *Ashburton.*] Might not another check be substituted for the check of appeal, namely, the check of public opinion, in the districts in which the subordinate Judges exercise their judicial functions?

I am afraid that would be a very inefficient check in the present state of India. I think that the comparative great perfection of the Native agency in the Judicial Department is in a great degree owing to the right of appeal, whereby all the decisions of the Native Judges are subject to appeal somewhere. I would by no means withdraw this salutary check, but still, I think, more especially if the Judicial branch of the service is improved, as I hope it will be, that there should not be so many appeals allowed, first of all from the Native Court to the Assistant Judge, from the Assistant Judge to the Zillah Judge, from the Zillah Judge to the Sudder Dewanny Adawlut, and from the Sudder Dewanny Adawlut, in certain cases, to the Queen in Council.

3227. At present the Moonsiff, being a stranger, has no reason to regard the good opinion of the population amongst whom he resides; might you not have magistrates from amongst the Native population who would have such a regard for the opinion of those amongst whom they reside as would afford a useful check upon their conduct in the discharge of their judicial duties?

J. P. Willoughby, *Esq.*

5th April 1853.

I should be afraid of that; I doubt if you could find persons properly qualified to act as Magistrates in the manner indicated; even at present our judicial officers, both European and Native, are not sufficiently trained; if the Judge, moreover, was taken from the immediate locality in which he resided, he would have his friends and his foes, and I am afraid that would operate much more upon the Native than upon the European mind.

3228. Lord *Broughton.*] Do not you think that there might be a Court of final appeal in India, instead of having an appeal to the Privy Council in England?

I think there would be some considerable advantages in a system of that kind; it would certainly be more rapid and less expensive; but the difficulty would be to form the Court. In regard to an appeal from the Queen's Courts in Madras and Bombay (although it is not a subject upon which I am competent to give an opinion), it has occurred to me when reflecting on the subject, that an appeal might with advantage lie from those Courts to the Queen's Court in Calcutta; and in that case, probably, the number of Judges might be reduced. There are now two Judges at Madras and Bombay. In some respects, and for certain cases, two are better than one; but when the two differ in opinion, the Chief Justice has the casting vote, which, with deference, seems to me objectionable.

3229. Lord *Monteagle* of Brandon.] Would there be any great difference in point of time and expense in sending an appeal from Bombay to England and to Calcutta at the present time?

I think there would be both a saving of time and expense. I have understood that the expense of carrying on appeals to England is very large, and not only that, but by a curious rule made in England, the expense falls upon the State. It has, to my knowledge, frequently occurred, that under the present system of appeal to England, a considerable portion of the expense has fallen on the Government instead of the parties.

3230. Lord *Broughton.*] Do you see any objection to having a Court of last appeal at each of the Presidencies?

That, I presume, would be taking away the appeal to the Queen in Council altogether, and placing the final appeal in the present Supreme Courts at the Presidency. I think, in important cases, it is desirable that there should be an appeal to England.

3231. Earl of *Ellenborough.*] Do not you think it very important that the Judges of the Supreme Court should feel that any error in their decision will be noticed here by the Supreme Tribunal, the Privy Council?

I think it is important that the check against error which now exists should not be removed altogether.

3232. Is it not, in point of fact, a check upon the Government, in nominating the Judges themselves, that there should be an appeal from them to the Privy Council?

It is rather difficult to assert that this consideration weighs with the Home Government when the Judges are nominated.

3233. Lord *Monteagle* of Brandon.] You have spoken of the inconvenience of the present numerous appeals; are they, for the most part, appeals upon technical grounds, or appeals upon merits?

I cannot answer that question with any degree of certainty, because the appeals have not, except in a very few instances, ever passed through me; I recollect, as Judicial Secretary to the Government, a very few appeals passing through my hands; but this was some years since, and it was not my particular duty to pass an opinion upon them.

3234. Are you not aware that, in many cases, mere technicalities, such as an improper stamp, or the want of a stamp, or other purely technical omissions, are the grounds of appeal in India?

I believe that occasionally occurs; but I think no appeal should be allowed purely on technical grounds. The Courts in India should have the power to amend and rectify all omissions of that nature.

Willoughby, Esq.

1 April 1853.

3235. Seeing the facilities which have been lately given by legislation in this country to enable the Court to correct immaterial errors, are you of opinion that similar powers should be vested in the Courts in India?

Undoubtedly such facilities should be granted to the greatest extent possible.

3236. Lord *Elphinstone.*] Were the people in Guzerat and Kattywar, in judicial proceedings, obliged to use stamped paper?

Not in Kattywar, the Stamp Act only extends to the Regulation Provinces. It applies to the districts we possess in Guzerat.

3237. Were there any other equivalent payments exacted?

Not in Kattywar; in other parts there is, I believe, a small per-centage levied on the amount of the suit, on a system which I think was first adopted in Mysore.

3238. Did that absence of the expense of stamps lead to a great increase of suits?

The word "suitor," in its legal sense, is hardly applicable; no doubt it led to a great increase of complaints. No man is deterred by considerations of expense from preferring complaints; and many of them are very unfounded complaints. The absence of all expense must contribute to increase their number.

3239. *Lord Privy Seal.*] The stamp duties are only levied in the Regulation Provinces?

Only in the Regulation Provinces; the Elphinstone Code, for instance, is only applied to that part of the Bombay Presidency which actually belongs to the British Government. No new territory can be brought under that code except by express enactment.

3240. Lord *Elphinstone.*] Were not the stamps, at one period, either very much reduced, or altogether done away with, in the Bombay Presidency?

There was formerly an institution fee, distinct from that of stamps, which was abolished.

3241. Were not the stamps revived by Sir John Malcolm?

I think not; the Stamp Act, I believe, originally formed part of the Elphinstone Code; it is in fact Regulation XVIII. of that code, and was passed on the 1st January 1827, but it was not introduced into the Bombay Presidency simultaneously with the other Regulations. It came into force I think a few months later, and Sir John Malcolm may, in the meantime, have succeeded to the government; but it was framed during Mr. Elphinstone's administration; such is my impression, but I am speaking from memory.

3242. Was it framed for the purpose of checking litigation?

I have no doubt that was one object, and in part probably to defray the expenses of the Courts of Justice.

3243. Lord *Monteagle* of Brandon.] Do you think that the principle of augmenting the expense of legal proceedings for the purpose of checking litigation, or, in other words, the seeking a legal remedy, is a tenable principle?

Certainly not, if the litigation is for obtaining a legal remedy *boná fide*; but the Natives of India are exceedingly litigious, and they very often seek an illegal remedy: they resort to law out of revenge, and similar motives.

3244. Is it possible to impose a stamp duty upon all legal proceedings that will not have the effect of checking the demand for a legal remedy, as well as checking the litigious proceedings of men who are not entitled to a legal remedy?

No doubt it must have that effect; and it is difficult to obviate the evil alluded to.

3245. You have already said that one of the inconveniences to which you have adverted, arising from the numerous appeals now allowed, is, that an impediment is thereby interposed to the claim of the poor, as distinguished from the claim of the rich. Must not that inconvenience, such as it is, be augmented, when the State imposes a stamp duty upon legal proceedings?

I have no doubt that it must operate; in the abstract, of course a stamp duty on legal proceedings is bad.

3246. Are

J. P. Willoughby, Esq.

5th April 1853.

3246. Are you aware that in England, of late years, the tendency has been to remove all stamp duties upon legal proceedings?

Yes.

3247. Does not that principle apply to India not only to an equal degree, but in proportion as the Indian litigants may be poorer than the litigants in England; does not it apply with still greater force?

If the principle is good, and I should say it must be good, no doubt, for the reason stated in the question, it must have greater force in India than in England, because, unquestionably, the inhabitants of India are poorer than the people of this country.

3248. Lord *Elphinstone*.] You said that in Kattywar you had no stamps upon legal proceedings; did you find that the people in Kattywar were more litigious than they were in the Company's territories, where stamps existed upon legal proceedings?

I do not think that the two can bear comparison. In the first place, in our own territory, the whole administration in every branch is conducted by a British functionary; in Kattywar he is only vested with political authority. The greatest part of the administration still continues in the hands of the chiefs of that country. I do not suppose that any situation was more overworked than that of Political Agent in Kattywar was in my time; and I believe it is the same now. The absence of stamps upon legal proceedings no doubt, by facilitating complaints, increases their number; but the administration of Kattywar and of our own territory is conducted on such very different principles, comparison is impossible. If they were the same, at least 20 British functionaries would be required in Kattywar, where three or four now suffice.

3249. Do you think that the people are more litigious in the Native States where there are no stamps upon the legal proceedings, or in our territories where there are stamps?

Having served in one and not in the other, I have hardly data to form an opinion upon that question; I think our system, however, in some respects, promotes and fosters litigation.

3250. *Chairman*.] When the Government is a party to a suit, has it any peculiar privilege?

None whatever; in fact, it is very often treated in Her Majesty's Courts as a corporation, and not as the representative of the Sovereign. It pays its own costs the same as any other suitor. The maxim which prevails in this country, that *Nullum tempus occurrit regi*, is not known and enforced in India, by which I am certain that, occasionally, public rights are materially sacrificed.

3251. Lord *Monteagle* of Brandon.] Was not that maxim, to a certain degree, that is to say, the principle of limitation, affirmed by the Privy Council upon an appeal in cases of resumption as against the Indian Courts, who had held that there was no limitation?

Regulation V. of the Elphinstone Code imposes "limitations of time for prosecuting civil actions."

3252. What is the limitation?

Possession of lands or other immoveable property for more than 30 years is a good title, unless such possession was acquired by fraudulent means, when it may be disturbed within 60 years. Insults and injuries to the person, calumny and abuse and exclusion from caste are only actionable within 12 months. Suits for debt not supported by a writing, and all suits for damages not previously specified, must be fixed within six years, but otherwise in 12 years. Mortgaged property is always recoverable, unless held in *bonâ fide* ownership for more than 30 years, if immoveable property, or any period if moveable, when the first alienation may be sued. Titles to exemption from the payment of land revenue are regulated by Regulation XVII. of 1827, modified by Regulation VI. of 1833: with certain exceptions, 30 years' possession constitutes a valid title.

3253. Lord *Elphinstone*.] Is not that limitation contrary to the Hindoo law?

I believe it is. Colebrooke, in his Digest of Hindoo Law (vol. iii. p. 443), cites the following texts of Vichaspati: "The property of a house, arable land, a market, or other immoveables, which are possessed by a friend or a near kins-

J. P. Willoughby, *Esq.*

5th April 1853.

man in the male or female line, who is not the proprietor, shall not be lost *to the rightful owner.*" "Nor shall the husbands of daughters, nor learned priests, nor the king, nor his ministers, acquire a title by a very long and quiet possession."

3254. *Chairman.*] Are the Company liable to be sued in all Courts, Native as well as European?

Yes, from the highest to the lowest.

3255. Earl of *Ellenborough.*] When the Government of Bombay are obliged to appear as suitors in the Courts of justice, do they often get verdicts?

I believe the verdicts are as often for as against them; but I have here in my note-book an epitome of "The Report of the Legal Affairs of the Bengal Government for the year 1848–49. This is a report of all the cases instituted by or against Government in the various Civil Courts throughout the Lower Provinces, and affords conclusive evidence that the Governments of India, in reference to the pecuniary claims of its subjects, are not directed by the arbitrary principles of eastern despotism, but regulated by the same constitutional model as the Government of England. The number of cases instituted by Government in all the Courts of original or appellate jurisdiction, including those pending at the commencement of the year, amounted to 44 The number of claims brought forward in like manner, and within the same period, by private individuals against Government, amounted to 908, making a total of 952. Of these, 354 were decided in favour of, and 76 against, Government. The legal expenses incurred in these suits amounted to 38,563 rupees; the sum recovered by decrees of Court, 77,103 rupees. The great fact established by this report, and which it is important for the interests of truth and justice to bear in mind, is this, that the Government of India, which has been held up to the contempt of the civilized world for its oppression and tyranny, has placed itself upon a level with its own subjects in its own Courts, in reference to all claims which they may advance against the State; that the people are at liberty to resort to the same tribunals and same process for enforcing their claims on Government as they have recourse to in their claims on each other; and that Government has secured for itself no peculiar advantage whatever. The report shows that if we divide the number of the cases instituted by the days of the year, not a day passes in which some suit is not brought against Government in the Civil Courts, and that not a week passes in which some suit is not decided against it. It teaches us that these actions are not confined to the Superior Courts, in which Europeans preside, but that Government is liable to be sued in the Court of any common Moonsiff, and that the Moonsiff on 100 rupees a month, whose gradual elevation to the post of Principal Sudder Ameen with 600 rupees a month depends entirely upon the Government, freely decides cases against its interests, without the slightest apprehension that such adverse decisions will for a moment interfere with his promotion. The charge which has been so gratuitously brought against the judicial officers of this Government is unanswerably refuted by the facts which are brought forward in this report. That feeling of independence is not confined to the highest Judges in the country, who have nothing to hope, and little to dread, but it extends to the lowest judicial officer, who considers himself so safe in the exercise of his official independence, as to send his own masters discomfited from his bar, without the slightest apprehension." These remarks are taken from a long article on the judicial administration of British India in the "Friend of India," of the 18th of July 1850, and I quote them because it has always appeared to me a very noble feature of our rule in India, that though succeeding to the most despotic Governments which, perhaps, ever existed, we have not scrupled to place ourselves on a par with our own subjects, or, in the words of the late Lord Metcalfe, we do not hesitate "to struggle for justice before tribunals composed of our own subjects." It is, perhaps, only right to add, that Lord Metcalfe concurred with Mr. Holt Mackenzie in opinion that we had gone too far, and that in India the supreme judicial control ought to be retained in the hands of Government: Lord William Bentinck, on the other hand, contended for a continuance of the separation, which Lord Wellesley was the first to adopt, of the judicial functions from the legislative and executive authority of the State.

3256. *Lord Privy Seal.*] What is the technical form of the suit; does it run in the name of the Company?

Yes;

J. P. *Willoughby*, Esq.

5th April 1853.

Yes; in the interior the plaint is generally filed either by or against the Collector, who, of course, is the representative of the Government.

3257. In the case of a suit instituted by the Government, what is the form?

Then it is instituted by the Collector, on behalf of the Government, against the individual, and under the legal advice of an officer called "Legal Remembrancer," who is a Barrister of the Queen's Court in Bombay.

3258. *Chairman.*] What has been the effect of admitting Natives to the Grand and Petty Juries, and to be Justices of the Peace?

I think the effect has been very good; it is a distinction, especially that of the Grand Jury and Justices of the Peace, which the Native gentry of Bombay prize very highly. All the Native Justices of the Peace become eligible for the Grand Jury, and are exempt from serving on the Petit Jury, which is an object of ambition, serving on the latter not being so popular or agreeable.

3259. Who appoints them to the Bench?

The appointment of Justice of Peace runs in the name of the Governor in Council; but the Governor nominates. The commission of the peace is obtained from the Supreme Court, and this sometimes creates, at Bombay, difficulty and inconvenience, and delay, and some expense. It very often happens that an officer is appointed to a situation in the interior who is occasionally called upon to act as a Justice of Peace; for instance, a Superintendent of Bazaars, who is vested with police authority in a military cantonment, and in that capacity adjudicates cases of petty assaults on Natives by British-born subjects, under Act Geo. 3, c. 155, s. 105. Whenever this occurs, it is necessary to cancel the whole commission of the peace, and to issue a new one, in order to introduce the name of the newly appointed officer. I have known much inconvenience occasioned in this way, and also expense; because certain officers of the Supreme Court are entitled to fees on the issuing of these commissions. All this might be obviated by vesting the Governor in Council with direct authority to issue commissions whenever they are required. The intervention of the Supreme Court seems unnecessary; for the right of Government to nominate whoever they please is even now, as it ought to be, absolute.

3260. Have you had any cases of the removal of Natives from the Bench?

During my time I recollect two instances. They were not actually removed, but their names were withdrawn from the new commission of the peace when it was issued.

3261. Earl of *Ellenborough.*] Are appointments formally made in the name of the Governor in Council?

Yes, invariably.

3262. But, practically, are not all the appointments made by the Governor alone; do the members of Council on any occasion interpose with their opinion?

They may, and very often do interpose with their opinion, and object to the Governor's nominations. I believe I was accustomed to do this oftener than is commonly the case, but it was a very invidious thing to do. In some cases the Council were in a majority against the Governor, and it was not a settled point at Bombay whether in such cases the Governor could overrule the opposing Council or not. I recollect one or two cases being referred home.

3263. What was the decision?

The decision was not very positive; but, practically, since that time the Governor has been considered to have the power of overruling the Council.

3264. How does it stand upon the Act of Parliament?

The Act of Parliament gives to the Home authorities the power to issue their orders upon the subject, and to state how the patronage is to be disposed of. The Bombay system, until very lately, was founded, I believe, upon the orders issued as far back as 1780. Some I believe are of opinion, that in the present state of the law, a Governor cannot overrule the Council in questions of this kind.

3265. To what extent does the Governor of Bombay possess the power of overruling the majority of the Council?

According to the Act of Parliament he must declare something very nearly amounting to "The State is in danger," or in other words, that the safety and

J. P. Willoughby, Esq.

5th April 1853.

tranquillity of the British Possessions in India required the adoption or non-adoption of the measure proposed by the Governor, and opposed by his Council. The forms under which this power must be exercised are very stringent.' *See* 33 Geo. 3, c. 52, and 3 & 4 Will. 4, c. 35, s. 49.

3266. But of course he could not do that in the case of the appointment of a Justice of Peace?

No. In my time the question was raised and discussed, how, when the Governor proposed and the Council objected to an appointment, the case should be disposed of. I may say, however, that in practice at Bombay all patronage is vested in and distributed by the Governor.

3267. *Chairman.*] Have there been any Courts for Small Causes established at Bombay?

Yes, there have. We always had a Small Cause Court, called the Court of Requests, with a limited jurisdiction up to 80 rupees or 8 *l.* This has been abolished since I left India; and partly for the sake of uniformity, and partly in order to increase its jurisdiction, a Court similar to one which has been recently established at Calcutta and Madras, has been introduced at Bombay. One of the consequences of this measure has been to deprive the two Native Commissioners, of whom Monackjee Cursetjee, the person who wrote the pamphlet to which I have referred, was one, of the situations they held in the old Court of Requests. This is to be regretted, as these two Commissionerships were among the most valued of the appointments at present open to the Natives. I presume, however, they were not qualified to fill situations in the new Court, which would require a considerable knowledge of English law and practice. It seems to me desirable, that when the Natives are still further advanced, situations should, if practicable, be selected for them at the Presidency, where they would be under the eye of the Government, and where there is the check of public opinion.

3268. Lord *Stanley* of Alderley.] Has much business been brought before those Courts?

Very considerable. I must also add, that before this Court was established in Bombay, there was a branch of the Supreme Court which was conducted very much on the same principle; it was called the Small Cause Branch of the Supreme Court, and the jurisdiction was exercised by the Judges themselves, but on more summary and cheaper principles.

3269. Has the effect of that Court been to diminish very much the business brought before the Supreme Court?

That Court has been established since I left Bombay, but it must necessarily have very much diminished the business of the Supreme Court.

3270. Lord *Elphinstone.*] Do you suppose that the new Small Cause Court has more business than the old Small Cause Branch of the Supreme Court?

Its jurisdiction has been very considerably increased, and, therefore, I presume its business must have increased. The Court of Requests only had jurisdiction up to 80 rupees. We at Bombay were rather adverse to the new Court, because we thought the object might have been gained equally well by increasing the jurisdiction of the Small Cause Branch of the Supreme Court. Sir Erskine Perry, the Chief Justice at Bombay, was very much against the change.

3271. Could that have been done without incurring any extra expense?

It would certainly have saved expense at Bombay; but I have no doubt that the Government of India desired to introduce one uniform system at the three Presidencies.

3272. *Chairman.*] With regard to Small Cause Courts, could they be introduced into the interior of the country with advantage?

If an arrangement of that kind is practicable, I think a greater benefit could not be bestowed upon the country. At present there is great difficulty and inconvenience incurred by suitors, in consequence of being obliged to proceed to the Sudder or some distant station upon small matters. My only doubt is in regard to the agency available for such Courts, for, in order to answer the object in view, it must combine cheapness and integrity, which is rather difficult. I think, however, the plan should be tried as an experiment, but in the first instance on a limited scale.

J. P. Willoughby, Esq.

5th April 1853.

3273. Lord *Elphinstone.*] Are not the Moonsiffs' Courts Small Cause Courts?
To a certain extent they are; but they are not sufficiently summary or cheap enough for the poorer classes.

3274. Lord *Monteagle* of Brandon.] Do you think the Moonsiffs and the Sudder Amins are sufficiently paid for the efficiency of their judicial functions?
I believe in Bombay they are better paid than elsewhere; but I should be glad to hear the rate of remuneration had been increased.

3275. Earl of *Ellenborough.*] How much do they give the Moonsiffs there?
There are three grades; I am not positive, but I think they receive from 150 rupees a month up to 300; the Native Judges receive 500 rupees.

3276. What is the origin of the men who fill those situations, and what are their relations?
They are very often taken from the Vakeels practising in the Adawluts, or else from the Collector's office. The selection of the Moonsiff depends upon the Judge, and that of the Sudder Ameen is vested in the Judges of the Sudder Court. The Principal Sudder Ameens are appointed by Government.

3277. What is their condition in society; are they of the class of very small shopkeepers, or very small landholders?
Never having been a Judge myself, I cannot speak from my own knowledge. A majority of them are, I believe, Brahmins, and most of them have previously served in subordinate situations in the Collector's, Judge's or other offices, as carcoons, clerks and inferior police officers. It is the duty of the local authorities to select the most competent among those who have passed the prescribed examination. Although I have known an instance or two to the contrary, as a general rule, the Native judicial officers must have filled the office of Moonsiff before they are promoted to the superior grades of Sudder and Principal Sudder Ameen.

3278. What income would such a man be likely to have if he were not a Moonsiff?
I do not think I can answer that question, because our Native judicial officers are not taken from any particular grade or class. For instance, I know a member of the family of a Mahratta Sirdar or Chief holding the situation of a Moonsiff. I think a better system might be introduced for training, selecting and promoting our Native judicial officers.

3279. Lord *Broughton.*] Is there an examination before they are appointed as Moonsiffs?
There is an examination; they are obliged to undergo an examination before the Judges of the Sudder Court. The Vakeels who practise in our Courts are also examined, and must obtain a certificate before they can practise.

3280. Earl of *Ellenborough.*] Although the salary appears to us to be small, may it not be a very large salary compared with the wants and with the condition in life of the person who receives it?
That is the case, to a considerable degree. Of course, one of the great advantages of extending Native agency is, that it is far more economical than European. It would not be necessary to assign the same salary to a Native functionary as is assigned to the European functionary.

3281. Is not the pay of 30 rupees a month, which is received by the Soubahdar, an extravagant sum, considering his condition in society; does it not place him, when he retires, greatly above those with whom he is connected?
That is, I believe, the pay of a Jemadar; the pay of a Soubahdar is, I believe, about 50 rupees. The pay is probably liberal, with reference to the circumstances alluded to, but I am afraid, nevertheless, that a great number of the Native officers of the army are in debt, though, on the other hand, some amass considerable wealth, especially the Purdeeses from Hindostan. The uniform of the Native officers is very expensive, and they have to furnish this themselves.

3282. Lord *Stanley* of Alderley.] Have the Moonsiffs any opportunity of obtaining any legal education before they are appointed?
The present means of obtaining a legal education are very deficient; they are obliged to undergo a certain examination before they are appointed, and to

J. P. Willoughby, Esq.

5th April 1853.

obtain a certificate from the Sudder Adawlut that they have the required qualification; but I believe the test is not of a very high standard.

3283. Are there any places of education in the Provinces where they may obtain the knowledge which they require to fit them for the office?

Hindoo law is, I believe, included in the course of study pursued at the college at Poonah; but there can be no doubt that the present means of training up our Native judicial officers, at least at Bombay, are exceedingly defective. There are Native Pundits who are learned in the Hindoo law, and Kazis and Moonshees who are learned in the Mahomedan law; every Zillah Court is provided with Hindoo and Mahomedan law officers.

3284. *Lord Privy Seal.*] Who conducts the examination of the Moonsiffs?

The Judges in the Sudder Court, aided by their Native officers.

3285. Lord *Monteagle* of Brandon.] Is there any analogous examination for the junior European civil servant before he is appointed to a judicial office?

I think he is subjected to a much severer test than the Native. There is first of all the Haileybury test, then the test of two languages in India, and lastly he is obliged to pass an examination in the local regulations before a committee, and to be declared competent for the transaction of public business.

3286. But suppose the case of a civil servant, who has been in the Revenue Department, and is about to be transferred to the Judicial Department, is he, before he is appointed to a situation in the Judicial Department, subject to any test or examination?

Not more than I have mentioned. I have pointed out some of the defects of the present system, and suggested that it should be altered. I am informed that at Calcutta a very beneficial change has been recently introduced, namely, intermediate examinations.

3287. Lord *Ashburton.*] Is the Patell sufficiently paid?

All the Patells have certain allowances from the villages either in money or grain; but, in my opinion, many of them are not sufficiently remunerated. The office of Patell is of importance, and it should be our object to maintain and even increase its respectability.

3288. Have they not been deprived of the fees which formerly constituted their payment, and has anything been substituted for those fees?

I do not think they have been deprived of their regular hucks or fees, but there is no doubt that under the Native Government they enjoyed a number of perquisites which we should consider illegal, and which, if they were to take, they would be liable to punishment. In many respects it is very difficult to adapt the Native system of Government to our principles of administration.

3289. Has any regular pay been substituted for that?

There have been great efforts made in the Bombay Presidency to place the allowances of the Patells and other hereditary officers on a more liberal footing. It has been rather made a reproach against the Bombay Government, that they have already, in effecting this object, alienated the revenue to too large an extent, that is, in making allowances to the hereditary officers, of whom the Patell is one.

3290. Who has made those complaints?

I mean that it is one of the observations made, that although, as is erroneously stated, Bombay does not pay its expenses, our charges under that head are much higher than in any of the other Presidencies. I believe, however, this admits of a satisfactory explanation; but it is, for the most part, a Revenue question, and I was never employed in the Revenue Department.

3291. Have not many representations been made to the Government of India as to the inadequacy of the pay of the Patells, and the absolute necessity of increasing it?

There have. A very voluminous correspondence has been carried on between the Bombay Government and the Government of India, and also with the Home authorities.

3292. What has been the result of those representations?

I am not certain whether any final answer was received before I left India, in

J. P. Willoughby, Esq.

5th April 1853.

May 1851. The subject was under discussion several years. The argument of the local Government was this: "You exact responsibilities from those officers, and it is unfair to exact official responsibility without adequate remuneration."

3293. *Chairman.*] Do the Natives take much interest in their municipal affairs in Bombay?

I think the interest they take is increasing; but, at the same time, it is very imperfect, and it is sometimes very difficult to assemble the Bench. The municipality of Bombay is under the management of the Justices of the Peace, European and Native, controlled in some respects in the disbursements by Government. Much discussion occurred in 1849-50, in which I took part, and the powers of the Board were enlarged; but, generally speaking, the Justices did not display any very great aptitude for self-government, which we desired to increase. A minute, which I recorded on the 20th March 1850, and another on the 10th August 1850, would explain to the Committee how the case stands at Bombay, and what progress has been made in stimulating the Natives to take an interest in their own affairs.

3294. Do they show any aptitude for that sort of business?

More so at the Presidency than elsewhere; but I recollect obtaining a return of the number of Justices who attended the "Special Sessions" in 1849, and I found that out of about 40 European and 17 Native Justices that scarcely ever more than from two to seven attended, except when there was any question connected with patronage; such for instance as the nomination of the members of the Board of Conservancy, or the appointment of a clerk or an engineer officer. The greatest number who attended on any one occasion in 1849 was 13: this subject is alluded to in the minute above mentioned, dated the 20th March 1850.

3295. How are the municipal affairs conducted in the interior?

This subject has also recently been under the consideration of the Government of Bombay. There is very little public spirit in the interior, and municipal affairs are very much neglected in consequence. The Magistrate of each district is the person who is vested with the authority to make sanitary regulations, as far as he can do so. But latterly there has been a slight improvement on the Bombay side in that respect, and we are now endeavouring to induce the Natives to take an interest in these matters, and to tax themselves for local improvements, in which, in several places, and especially in the southern Mahratta country, we have succeeded.

3296. Do you think that the Government has sufficient opportunity of rewarding meritorious Native officers?

It has, of course, an opportunity of rewarding Natives, by promoting them to situations in the public service, and making occasional presents. The ability of the local Government to reward, however, is not, in some cases, so great as I think desirable; it has no power, for instance, to bestow land even for the most meritorious services, and that is the gift which is more highly prized than any other. Grants of land in the present day are very seldom made, even by the Home authorities.

3297. Lord *Mont-Eagle.*] What sort of presents does the Government make the Natives?

I have seen instances, though they are rare, where the Governor has held a public durbard in the presence of all the Natives; made a present of a pair of shawls, or something of that sort, after the native fashion, to Natives considered worthy of such a distinction. Honorary presents are also made to the principal shipwrights, so celebrated in Bombay, when ships are launched. The practice of giving presents, however, is in the present day discouraged.

3298. Earl of *Ellenborough.*] Did you ever give them titles?

Yes; some of our judicial and revenue servants have had native titles given them by Government, and the honour is much valued.

3299. Did you ever at Bombay give the title of Rajah?

No.

3300. *Lord Privy Seal.*] Do you think that titles given by the English Governors are held in very high estimation by the Natives?

J. P. Willoughby, Esq.

5th April 1853.

I have no doubt of it; so much so, that I think myself that if an order of merit were established for the civil branches of the service (I mean our native functionaries) on something the same principle as in the army, it would have a very excellent effect. The Queen was graciously pleased to confer the honour of Knighthood on Sir Jamsetjee Jeejeebhoy, and to send a gold medal with a suitable inscription; he wears this medal on all public occasions; he prides himself on the distinction, and I believe values it more than anything he possesses.

3301. Do you think that titles given by the English Governors are held in higher estimation than the old hereditary titles of the country?
No, I do not think they would be held in higher estimation, if so high.

3302. Lord *Broughton.*] Are you aware that certain official documents of the Secret and other Departments of the Bombay Government have come into improper hands?
There were complaints sometimes that information oozed out of the Secret Department, but I cannot call to my recollection any instance in my time of documents *in extenso* being obtained. There is no doubt that there is a great laxity of principle amongst the native part of the establishments, and that breaches of confidence do occur. I have seen it stated since I came home, that copies of minutes, which were recorded by the Government of Bombay, were surreptitiously obtained and furnished to the Guicowar. That flagrant breach of faith I have no doubt must have been committed by some subordinate in the Secretariate for a large pecuniary douceur. From the Scinde Blue Book, lately published, it will be seen that a similar nefarious transaction occurred in that province in 1843–44. Money will procure anything in India, as it will do elsewhere.

3303. You consider that that breach of faith and honesty is chargeable upon the Natives, and not upon any of the European servants of the Company?
Certainly not upon any of the European covenanted servants of the Company. I would not say that an inferior clerk might not have done it. I recollect two instances of breach of trust on the part of Natives in the Secretariate, in which, under the sanction of Government, I summarily dismissed the parties from their situations.

3304. Lord *Monteagle* of Brandon.] Were those documents abstracted from the Secret Department of the Bombay Government?
From the Political Department; I do not think they were in the Secret Department. They related to a question which was under the consideration of Government, relating to the disposal of some property, and in which his Highness the Guicowar was personally interested.

3305. Are Natives employed in the subordinate offices of the Political Department?
They are. In one of the instances above alluded to, I dismissed a Native clerk on finding in his desk copies of several Baroda papers, which he had no right to possess; my suspicion was, that he had obtained them for some illicit purpose.

3306. Earl of *Ellenborough.*] Would it not be very advantageous to employ Europeans from England more extensively in the offices of Government, with the view of maintaining secrecy?
I should not think so, because it requires a long training before a person becomes efficient. I am alluding to the uncovenanted assistants in the Secretariate. The best man I ever had myself I took out of a ship; he was the mate of the ship. He was of good family, and received an excellent education. I entertained him on a very moderate salary in the first instance, but I found him so useful and efficient, that in two or three years I promoted him over the heads of all the other assistants, to the responsible office of head uncovenanted assistant in the Secret and Political Departments, and he fully realized all my expectations. It is the Secretary's interest to search for the best man he can get, without reference to patronage.

3307. Are there many half-castes employed?
There are many employed in the Secretariate, and very often they fill the office of uncovenanted assistants, and receive salaries varying from 200 to 600 rupees per mensem.

J. P. Willoughby, Esq.

5th April 1853.

3308. Do you think that generally you preserve secrecy?

I think that, generally speaking, secrecy is maintained wherever it is essential, and there is reason to suppose that any great injury to the public interests would ensue from the secret transpiring. In that case, the Secretary would take care to keep the papers himself as long as possible; but when you come to report home, and have to send three or four copies of very voluminous proceedings, then the papers must go into a number of hands, and I apprehend that the ensuring of perfect secrecy is impossible. On mail-days I had frequently as many as from 60 to 80 hands engaged in copying papers for the Home authorities, often till midnight. Then again, as actually happened with regard to Baroda, his Highness the Guicowar has no doubt been in the habit of bribing the subordinate officers of the Secretariate to furnish him with information. That has been proved by verbatim copies of documents having been lately intercepted by Lieutenant-colonel Outram.

3309. Can you explain how it was that during the Affghan war important military papers were published in the Bombay newspapers?

It may have occurred in several ways. In the first place. it may have been from communications from the officers of the force itself. Information also sometimes transpired in this way: when military movements were directed, orders must be issued to the Military and Ordnance Departments, and to those of the Quartermaster General and the Adjutant General of the Army, and information has occasionally been traced to the surbordinate clerks in their offices. On various occasions a searching investigation has taken place at Bombay, and sometimes the information has been traced in that way. At other times no trace could be ascertained how it transpired. There may possibly have been a breach of faith on the part of some person holding a situation in the Secretariate at Bombay; but I think the information is more likely to have been published by some of the officers on the staff or belonging to the force, they not being specially enjoined to secrecy, merely communicating it as news, and without intending any injury. Editors of papers in India very frequently publish long letters, as received from the officers of the army when on field service. Scarcely an overland mail arrives without the papers containing letters and extracts from letters, purporting to have been written by officers of the army now engaged in the Burmese war; and I am not aware of any way that this can be prevented, even if it were considered desirable to prevent it.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next,
Two o'clock.

Die Veneris, 8° *Aprilis* 1853.

LORDS PRESENT:

The Lord President.	Lord Wharncliffe.
The Lord Privy Seal.	Lord Wynford.
Earl of Ellenborough.	Lord Stanley of Alderley.
Lord Elphinstone.	Lord Monteagle of Brandon.
Lord Colville of Culross.	Lord Broughton.
Lord Mont-Eagle.	

THE LORD PRESIDENT in the Chair.

*

Evidence on the Government of Indian Territories.

F. J. Halliday, Esq.

8th April 1853.

FREDERICK JAMES HALLIDAY, Esquire, is called in, and examined as follows:

3310. *Chairman.*] WILL you be so good as to state what has been the nature of the appointments which you have held at different times in India?

I arrived in India in June 1825, and, I think, about February in the following year I was appointed an Assistant under the Political Agent in the Saugor and Nerbudder territories, which appointment I never joined; I was then transferred to the Sudder Dewanny Adawlut, the Chief Court of Appeal in Calcutta, as Assistant to the Registrar of that Court; there I remained till 1829, when I went as Assistant to the Magistrate and Acting Registrar of the Civil Court of Beerbhoom; later in 1829 I was appointed acting Judge and Magistrate of the zillah of Hooghly; after officiating there for some months I returned to my original appointment in Calcutta in the Sudder Court; from thence, in April 1830, I was appointed acting Magistrate and Collector of the zillah of Rajshaye, still holding my appointment in the Sudder Court; I remained there till January 1832, when I was appointed joint Magistrate and Deputy Collector of Humeerpoore in North Bundlecund; while holding that appointment, in consequence of the absence of my chief, I was appointed to act as Magistrate and Collector of that zillah; there I remained for rather more than a year, when I was appointed joint Magistrate and Deputy Collector in Noacolly in the Lower Provinces of Bengal; that was in 1833; I was appointed in the following year Magistrate and Collector of Dacca, but I never joined it, being told to remain on duty at Noacolly; in 1835 I was appointed Magistrate and Collector of the Northern Division of Cuttack, which I never joined, being still told to remain where I was; in May 1836, I was appointed Secretary to the Board of Revenue in the Lower Provinces of Calcutta; in October 1837, I was appointed to officiate as Secretary to the Government of Bengal, and about the following February I was confirmed in that appointment; I remained Secretary to the Government of Bengal till the end of 1848, when I was appointed to act as Secretary to the Government of India, and shortly afterwards permanently appointed Secretary to the Government of India in the Home Department; in that office I remained till I left India last July; my term of service amounting altogether to upwards of 27 years.

3311. What was the effect upon your emoluments of the different appointments, the duties of which you did not exercise?

F. J. Halliday,
Esq.

8th April 1853.

There were two cases in which they were increased; one was the appointment to the Magistracy and Collectorship of Dacca, and shortly afterwards the appointment to the Magistracy and Collectorship of Cuttack; they were both given me to increase my allowances, with the announcement that that was the object of them: I had satisfied the Government at the time with the manner in which I had been performing my duties, and those appointments were given to me as a mark of their satisfaction, I being at the same time told that it was thought fit that I should continue to carry on the duties at Noacolly, which I had been exercising for two or three years.

3312. Had you both salaries, or only the higher salary?
I had merely the higher salary.

3313. Lord *Mont-Eagle.*] Who performed the duties of the appointments which you did not join; was there a person who was nominally an Assistant at those stations?
I do not recollect.

3314. *Chairman.*] You do not know how he was remunerated, probably?
I know that under the regulated system which then existed, but which has since been modified considerably, he received an acting allowance for doing the duty of the office which I did not join.

3315. Lord *Mont-Eagle.*] Was that a common arrangement?
It was in those days a much more common arrangement than it is now; indeed now I may say such arrangement is never made; it was not at all uncommon then, and it is not at all uncommon now under Mr. Thomason's government in the Upper Provinces; but in the Lower Provinces of Bengal it has been for some years past entirely discontinued.

3316. *Chairman.*] Under the present system is there no mode of remunerating a public officer, who is supposed to be entitled by his conduct to some mark of approbation from the Government, without giving him an office of which he is not intended to fulfil the duties?
No, there is no way of doing it; the Government of course might, if they thought fit, obtain the previous sanction of the authorities at home, and increase a man's salary for services performed by him; but it is a thing I scarcely ever saw done; and the Government would hardly ever, except on very extraordinary occasions, take on themselves the responsibility of doing it, or even of proposing it; it could not be done without the sanction of the Government at home.

3317. Will you state to the Committee your opinion as to the general efficiency of the administration of justice in those portions of India with which you are acquainted?
The administration of justice is not the strongest part of our system; it is not the part with which I am myself disposed to be most satisfied, though a great deal has been done to improve it, and it is not by any means so bad as I have known people say and write; in the English part of the officers who administer justice, there is too little selection and too little attention to previous training, and though no doubt there are at all times some very able men upon the Bench, yet I think they form the minority, and the rest are, generally speaking, commonplace men enough; and there are some (and a few years back there were more), who are very inefficient indeed; latterly the Government has been weeding the Bench of such men, and I think there scarcely remain above one or two, if so many, now; in the Native part of the Judicial Service there is more attention to selection, but not so much as there ought to be, and there is not sufficient attention paid to training; I think also in some of the ranks, and those perhaps the most important, there is a general inadequacy of pay.

3318. Lord *Mont-Eagle.*] Are you speaking of European or Native officers?
I am speaking now, of the Natives. I think also our system is, generally speaking, too cumbrous and complicated; we have aimed at something more regular and systematic than is at all suitable to the largest class of the litigation which comes before our Courts; and though we might reserve that system, with considerable improvement, for the more complicated and difficult and important cases which would occur, yet in by far the largest number of suits which are brought before our Courts, a system more nearly resembling that in use in the County Courts in this country would, I think, be a very great improvement,

abolishing

F. J. Hallida
Esq.

8th April 185

abolishing the constant right of appeal, which now leads to delay and to expense, and which also tends to attach a bad reputation to the Judges, especially the Native Judges, because the present system of appeal obliges the Judges in the lower ranks, just the same as in the higher, to maintain a great number of small, hungry, ill-paid clerks; or clerks not paid at all; those men, by their extortions and exactions, undoubtedly do assist to give a bad character to our Courts, even though the Natives who preside over those Courts were, during the later years of my experience, very much improved in personal character; so that although judging only by those who preside in them, the character of those Courts may be said to have improved, yet, owing to the circumstance I have mentioned, of the undue influence of those numerous clerks and copyists in all the Courts, but especially in the lower Native Courts, the confidence of the Natives in them is not what you could desire; that evil might be obviated in a great measure by getting rid of the present enormous number of appeals, choosing the Judges better, paying them more adequately, and trusting them more largely.

3319. Lord *Monteagle* of Brandon.] You spoke of improving the training of the Judges as an object of desire?
Yes.

3320. Both of Europeans and Natives?
Yes.

3321. What improvements would you suggest in the training of the Native Judges?
It could not be done of a sudden, but I think you might aim at having all your Native Judges instructed in the principles of law and jurisprudence in one of the places of education which are now rapidly increasing; I think by means of something like a university, or a body of examiners appointed to examine candidates for public employment, and to give them degrees in different sciences: you might ensure that no Native should fill a judicial station but one who had given evidence of proficiency and preparation for it, and a tolerable promise of future improvement.

3322. Suppose such an examination were required upon the first appointment of a Native Judge do you consider it would be of importance that it should be continued in the event of the promotion of that Native Judge to a higher position?
I have not very carefully considered the subject, but speaking off-hand, I am inclined to favour the notion of a subsequent examination previous to the promotion of a Moonsiff to some higher degree on the Bench; it is a matter, however, which would require a little more consideration than I have given it.

3323. *Chairman.*] Is their chief deficiency the want of a knowledge of the law or aptitude as Judges, or is the deficiency rather in their moral qualities?
Their chief deficiency, we are apt to think, no doubt is a moral deficiency, a want of integrity; but they do also want a knowledge of the principles of jurisprudence and the laws of evidence, and they have no means of gaining it, because a man is appointed a Moonsiff usually after no previous experience of any kind in any Court, though not without some previous examination to test his supposed fitness for the office, but which does not do so sufficiently; he goes into the office of a Moonsiff and sets to work to judge poor men's cases: of course, habit and practice in investigations of that kind do improve the man, so that after some years' practice, he probably is a better investigator and a better Judge than he was at first; but he has not any very good means of seeing when he makes errors, so as to be able to correct them, except as such correction may be supplied to him by the result of the appeals against his dicisions to higher authority. There again our system of appeal seems to me to be defective; appeals from these lower Judges are, in the main, to other Native Judges who have gone through the same defective course of instruction, as they are to English Judges, who perhaps have gone through even a less satisfactory course of instruction; but in either case, they are appeals always from one single mind to another single mind; and where Judges are chosen with insufficient regard to fitness, as, I must say, is now the case in India, an appeal from one mind to another is apt to prove nothing but a lottery: there is no certainty of any greater fitness for deciding rightly in the senior Judge than in the junior Judge,

F. J. Halliday, Esq.

8th April 1853.

except as it may be furnished by the fact of his seniority. I have always thought it would be a great improvement, and would tend to remove the notion which now prevails in the Native mind, of the uncertainty of justice as at present administered, that appeals, if possible, should not be from one mind to another mind, but from one mind to two or three minds. No doubt, such decisions would have greater weight with the Natives, as has been actually seen in our experience of a similar experiment in the Sudder Court. If the decisions were upon the whole better, as they probably would be, they would be more instructive to them whose business it was to be benefited by them. In that manner, at all events, a method of instruction would be offered to the junior Judges better than that which now exists.

3324. Lord *Monteagle* of Brandon.] When you refer to the experience of the Sudder Court as illustrating the principle which you have laid down, do you refer to the alteration of practice which of late has taken place in the Sudder Court in respect to appeals?
Yes.

3325. Has it occurred to you, that the administration of justice could be improved by greater intermixture and concert of action between the European and the Native Judges, so as to combine the elements of the better local knowledge of the Native, and the higher principle which may be connected with the European servant?
For that and for other reasons, I have been for some time desirous that this appeal which I spoke of, from the lowest class of Judges to the next class, should be an appeal to what we call the Zillah Judge sitting together with a well-chosen and sufficiently-paid Native Judge, the English Judge having the casting voice, and that that Bench should decide appeals. I am also desirous myself of seeing a Native Judge, of course very carefully chosen, and sufficiently paid, appointed to the Sudder Court. I see no objection to that, but, on the contrary, considerable advantage in it, though in that case I should look upon it rather as a means of exciting emulation among the lower Judges, than expect that any particular good would be done by the man himself in the Sudder Court beyond what is now done.

3326. Earl of *Ellenborough.*] Which are the best Native Judges, Hindoos or Mahomedans?
I think it likely that different men would give a different opinion upon that subject; practically, there has been a preference for a great number of years, for the Mahomedans over the Hindoos for the office of Native Judge; among the Natives, the Hindoos look upon the Mahomedans in that respect as deficient and even stupid; but the idea among the Europeans certainly is, or has been, for a great number of years past, that the Mahomedans are superior to the Hindoos in integrity and in energy of character.

3327. Are they not of rather a higher class in society?
They are so.

3328. What is the class of society from which the Native Hindoo Judges are taken?
The Native Hindoo Judges, within my recollection, have been taken, in some instances, from the Pundits; those men who were brought up to a knowledge of the Hindoo law, and who, perhaps, had begun life as expounders of the Hindoo law in the Courts. Besides those, they have been taken from among the native ministerial officers of the Courts, who are persons of low social rank, and often not of very good character. Latterly, the system has prevailed of appointing no Native Judges except those who have passed through the rank of Moonsiff, and of appointing no Moonsiffs excepting those who have undergone an examination before the committees appointed for that purpose, and have obtained diplomas of fitness at those examinations. The persons appointed to the Courts are now gradually becoming more and more Hindoos than Mahomedans, and have been educated at our educational establishments. I am speaking chiefly of the Lower Provinces, with which I am best acquainted. The tendency has been such of late years, that in a few years probably those Courts will be mainly filled by Hindoos, and by Hindoos having a considerable knowledge of English through the education which we give to them in our Government schools and colleges.

3329. Lord *Monteagle* of Brandon.] Would the improvement which you have anticipated in the judicial class, in your judgment, lead to a corresponding and consequent improvement in the character of the Vakeels and other persons attending upon the Courts?

I do not see that an improvement in the Judges need directly improve the character of the Vakeels, excepting that the Judges have the power, either directly in the higher Courts, or indirectly in the lower, by recommendation to their superiors, of removing improper persons, and, of course, as the Judge of any Court had a higher idea of the qualities and the fitness required, he would be more likely to exercise his power in favour of good persons, and for the purpose of getting rid of the bad ones. But I should say that this system of examination for the appointment of the Moonsiffs is also in use for the appointment of the Vakeels in the Courts, and by that means, we hope we are improving the character of the Vakeels at the same time that we are improving the character of the Judges.

3330. Lord *Stanley* of Alderley.] Will you state the nature of the examination that the Moonsiffs and the Vakeels undergo?

There are provincial committees appointed at certain stations in the interior, and a central committee in Calcutta. They are both very carefully chosen, especially the one in Calcutta. The central committee compile questions upon law and practice which are transmitted to the provincial committees, together with certain stated A. B. C. cases, and, perhaps, in some instances, actually recorded cases. The candidates are obliged to give written answers to those questions. They are obliged to go through the supposed or actual cases, and give a decision upon them. The result of this is minuted upon by the provincial committee, and their minutes are transmitted to the central committee, who also, upon their parts, examine, as an original committee, those candidates who belong to the circuit where they hold their sittings. The result of this examination by the provincial committee, as corroborated or amended by the central committee, entitles the candidates to diplomas or otherwise, and it proves the possession, generally speaking, of a very sufficient knowledge of the laws and regulations, and such a knowledge as can be picked up from books of the practice of the Courts, and no doubt some capacity for judging of such cases as come before the Courts is shown in the decisions given upon those supposed or actual cases which are put before the candidates. I may also mention, that no person is allowed to present himself before those committees as a candidate for examination who does not bring a certificate of, I cannot say moral fitness, but of the absence of moral unfitness, at all events, and general respectability of character, from the Judge of his district.

3331. How are those committees composed; are there any Natives either upon the central committee or upon the provincial committees?

Upon both; there are Native Judges upon the provincial committees, and there are two or three Native Judges and others upon the central committee.

3332. Lord *Monteagle* of Brandon.] The system you have so clearly described is not, in your judgment, sufficient to supersede the larger plan which you have named, namely, an extension of the establishments of education with a view to legal studies?

I think that would be a better plan; that, I think, might supersede the other.

3333. And supersede it by the introduction of a better principle?

Yes.

3334. You have probably seen Mr. Cameron's petition, in which the establishment of such an institution at Calcutta is recommended as part of the system of colleges there; and a similar application from Bombay, with respect to the Elphinstone institution there?

Yes.

3335. Those suggestions concur with your general view?

Quite so.

3336. Lord *Wynford*.] Are those examinations to which you have referred conducted fairly?

As far as the examiners can secure fairness; they are conducted with the greatest possible attention to it.

F. J. Halliday, Esq.

8th April 1853.

3337. Comparing such a system with our own system here, have we any such test of the fitness of a person for office as is required from those Natives in India?

I am not sufficiently acquainted with the state of things here to make any comparison of the sort.

3338. Are their examinations conducted in so accurate a manner to test the fitness of persons for office here?

I am not aware.

3339. Lord *Mont-Eagle.*] At those examinations are the best persons only selected, or may an unlimited number pass?

Whoever comes up to the standard, which is high, receives a diploma; that diploma entitles him to receive a Moonsiff's appointment in his turn, whenever there is a vacancy.

3340. Lord *Monteagle* of Brandon.] Of late years has not the practice been introduced into India of printing and publishing a short *résumé* of the judgments of the Courts?

Not a short *résumé*, but a complete report of the judgments of the Judges in all the English Courts; it has not been extended yet to the Native Courts.

3341. Are they widely circulated?

They are circulated among all the Judges and Judicial Officers; means are adopted for all the Judicial Officers, whether European or Native, having complete access to those books.

3342. Is the knowledge of English among the class of Natives who are appointed Judges, for instance, among the Principal Sudder Amins considerable?

No; it has very much increased, and is increasing; but the number of Native Judges who understand English is at present small.

3343. Having in a previous part of your examination suggested as an alteration which might be productive of good, an increased degree of intermixture and union between the English and the Indian Judges, do you think that would have a tendency to extend the knowledge of the English language among the Natives, as well as to lead to a greater knowledge of the Native languages among the English Judges?

I do not think that that plan of itself would have any tendency to increase the knowledge of English, though it would have a tendency to extend the knowledge of the Native languages. I am supposing that the business would still be conducted in the Native languages.

3344. Do you think that the extension of the knowledge and the use of the English language, not confining the question to the Judicial Department, is a matter to be desired?

Very much desired.

3345. Has any mode occurred to you in which, with due caution, deliberation and prudence, the extension of the use of the English language in judicial proceedings might be promoted?

The extension of the use of the English language in judicial proceedings has recently, within the last few years, received very great encouragement in the only Court to which, in my judgment, it is now applicable, namely, the Sudder Court, the Chief Court of Appeal in Calcutta. In a Court to which cases come from various provinces having different languages, it is impossible that the Judges can know them all; therefore, it is impossible that in all cases the business can be conducted in the language of the persons concerned. What they did try after getting rid of the universal Persian, was to use Hindoostanee as the language of record in the Sudder Court, but it was found that that was in a great number of cases, especially in Bengal, quite as foreign a language to the people as the English, and very much more difficult and embarrassing, of course, to the Judge. They have not ventured to make any direct alteration in the language used; but what has been done is this: a rule was made some years ago, and it was foreseen at the time what would be the consequence of it, that whenever in the Sudder Court the Vakeels on both sides should understand English, and be content to practise in that way, the whole business of the case in which they were concerned before the Court should be transacted in English; the effect of that

has

has been a very large resort of English Pleaders and Barristers to the Sudder Court, and so great a change as to the language in which the business is conducted, that they conduct most of the cases now in no language but English in the Sudder Court of Calcutta; and very shortly, I think, the English will be completely prevalent there. It has had a very good effect upon the character of the Court, and upon the rapidity and promptitude and economy of the whole of its proceedings; but I do not think that the system is applicable to any other Court than the Sudder. I could not think of advising that in any province, for instance, where the Judge now conducts his business in the vernacular language of the country, it should be changed to English; special reasons for it exist in the case of the Sudder Court. This change in the Sudder Court, among other things, has been a great means of stimulating the Natives to the acquisition of English; and of late the Mahomedans, who for a great number of years have despised it, and taken no pains to instruct themselves or their children in English, have begun to see that it will soon be the chief road to fortune; and a great change has taken place in their conduct, so that they are now beginning to send their children to school to learn English, and are showing almost as great a desire to instruct their children in it as the Hindoos ever did; the probability is, that in a few years they will be quite on a par with the Hindoos. My own observation is, that where the Mahomedans set themselves to learn English, they learn it better than Hindoos.

3346. Has the change which you have now described acted upon the character of the practitioners of the Court, and excited somewhat a better spirit among them?

Very much so; very remarkably so; the Bar of the Sudder Court now is a very respectable Bar indeed—I mean that part of it which is not composed of Barristers of the Supreme Court; but English Barristers from the Calcutta Supreme Court are now largely practising in the Sudder Court, and bid fair to monopolize the practice there.

3347. Lord *Stanley* of Alderley.] Are there any Natives practising in the Court speaking English?

There are several who practise there who speak English. One of the best practitioners in the Court, a man acknowledged by the Judges, and by all who resort to the Court, to stand very nearly at the head, is a Native who speaks English. There are some Natives also who practise in that Court, and have large practice, who speak no English, but they belong to the old school, and are passing away.

3348. *Chairman.*] Are there many Native pleaders who are not browbeaten by the English counsel?

There is no Native pleader of any standing in the Sudder Court who would be browbeaten by an English counsel.

3349. Lord *Stanley* of Alderley.] They are able to maintain their own, are they?

They are, perfectly so.

3350. *Chairman.*] To revert to the subject of the administration of justice by the Native Judges in the provinces, is it as speedy or as economical as it ought to be?

By no means; the system is very much too complicated.

3351. Lord *Monteagle* of Brandon.] Has it been also very technical?

The system aims at too much regularity, and too much technicality. A great deal of technicality has been built upon it in practice, which was not originally intended, and hence, of course, delay arises and expense.

3352. Does not that characteristic of the system greatly promote the habit of appeal?

Yes; a great number of appeals turn upon matters of form and technicality to such an extent as ought not to be the case; in that respect it is chiefly that I think our system requires and is capable of very great amendment.

3353. Can you account for the fact, that very heavy stamp duties are payable in the Inferior Courts, while in the Supreme Courts the legal proceedings are entirely free from stamp duties?

F. J. Halliday, Esq.

8th April 1853.

It is accounted for by the different system of law under which they act. The Supreme Court acts upon the system of English law. I am not aware that in India stamps are required for judicial proceedings by the English law; but in the Courts of the Government of India, which act under the law of the Government of India, stamps are by law absolutely necessary for a great number of judicial proceedings, and hence the difference in practice.

3354. Do you think they are defensible upon principle?
I do not; I should not be at all sorry to see all the stamps done away with in all the Courts.

3355. Supposing stamps were to be used exclusively in the one Court, and not in the other, would you recommend that the exemption should be rather in the Inferior Court, inasmuch as there they must press more heavily upon the lower classes?
In speaking of the system now prevailing in the Supreme Court, I spoke of that Court as administering the English law; but the Supreme Court can scarcely be called a superior Court, and the other an inferior, in speaking of the two systems, for they stand quite separately.

3356. Take the proceedings of the Supreme Court; is it not the fact that in the average number of cases, the amount of property involved would be greater than would be involved in the cases in the Mofussil Courts?
I am not at all sure of that.

3357. *Chairman.*] What is the total amount of revenue which is derived from stamps in India?
I cannot say what is the total amount of revenue derived from Judicial Stamps, it is not a very great amount.

3358. Lord *Elphinstone.*] Are there not other expenses attending litigation in the Supreme Court, which make it quite as costly to carry on a suit in that Court as in any of the Company's Courts?
My notion is that it is very much more costly.

3359. Lord *Stanley* of Alderley.] Has not there been a Small Cause Court established in Calcutta?
There has.

3360. Has it worked well?
It has worked exceedingly well; so well, that a petition has been presented by the merchants and shopkeepers and other residents in Calcutta, praying that the limit of the jurisdiction as to value may be doubled, and that the jurisdiction may be extended to the country about Calcutta to a considerable distance, as well as to Calcutta itself; it has been considered to be a very successful experiment.

3361. Has the mode of proceeding in that Court been more simple and less costly than in the ordinary Courts of the country?
It has been perfectly simple and very economical, so much so as to bear no comparison with the ordinary Courts of the country.

3362. Do you think it would be advisable to assimilate the mode of proceeding in the ordinary Courts of the country to the course of proceeding in this Small Cause Court of Calcutta?
I think it would; I am very desirous of seeing that portion of the litigation of the country which is of a character suited for the operations of a Small Cause Court, which I believe is the case with a great proportion of the litigation, transferred to Courts constituted like the Small Cause Court in Calcutta; and I may say that the experiment is now in course of being made; of course the difficulty is, that the Small Cause Court in Calcutta is presided over by Judges much better paid than you could afford to pay a number of such Judges in the Mofussil, and also carefully chosen, and it has final jurisdiction.

3363. Lord *Wharncliffe.*] Are the Judges all Europeans?
There are two Europeans and one Native; but of course you would hesitate a little before entrusting final jurisdiction in so large a class of cases to Judges in the Mofussil, inadequately paid as some of the Native Judges now are; if the Native Judges in the Mofussil could be properly paid, and therefore better chosen, I should

F. J. Hallida
Esq.

8th April 185

I should not hesitate to entrust them with such a jurisdiction as that of the Small Cause Court, and, I think, though there may be risk in it, it would be a better thing on the whole to run the risk than to put litigants to the great delay and expense involved in the cumbrous and complicated system now in use.

3364. Earl of *Ellenborough.*] Is not the salary of the Native Judges, small as it may be compared with the salaries of Europeans, much larger than any annual profit they could otherwise derive, except from successful trade; have they any other means of obtaining an equal income in the country?

I am not aware that the class of men usually appointed to our Moonsiffships would have any other means of obtaining an equal income, but there are means of obtaining better incomes; and if we paid our Native Judges better, we should have a better class of men, with higher aspirations; I know, among the Natives, the present salary of the Native Judges is thought to be insufficient; and the general opinion among both Europeans and Natives is, that when they are paid at a rate of only 100 rupees, or in some rare cases 150 rupees a month, you cannot expect that they will be thoroughly honest and incorrupt.

3365. *Chairman.*] Is not it the case that the Natives are very seldom satisfied with the decision of a Native Judge, and generally carry the case to an appeal?

I do not think that that can be said either; looking at the figures, it appears that in 1850 the number of appealable decisions of the Native Courts was about 75,000, and only about one-eighth of that number were actually appealed.

3366. Lord *Elphinstone.*] What was the proportion of appeals from the decisions of European Judges?

I cannot answer the question off-hand, not having noted it. I think probably the proportion of appeals would be larger, because the cases they decide are of more value, and would bear better the expense of appeal.

3367. *Chairman.*] A proposal has been suggested to the Committee of amalgamating the Supreme Court and the Sudder Court, in order to make one great Court of Appeal; do you think such a system as that would be advantageous?

I think it would be very advantageous. I think a liberal-minded, well-educated lawyer, and something more than a lawyer, at the head of the Judicial Administration of India, would introduce immense improvements gradually into the administration of justice: he would introduce regularity and system, without complication or technicality, which we stand very much in need of. Such a man as that would have any defects, or any bias or prejudice which he might entertain or be liable to entertain from his previous training, counteracted by the intercourse he would have with his colleagues brought up in the regular service.

3368. Would there be any objection to admitting an eminent Native to sit in that Court of Appeal?

I think, none whatever.

3369. Lord *Monteagle* of Brandon.] Supposing a system, such as that which you have been describing, to be introduced, do you think it would be expedient that the English Judges should now and then, under certain regulations, go round in the way of circuit, for the purpose of observing and giving information to the Government as to the mode in which the administration of justice in the Mofussil was being conducted?

There is no doubt that such a system as that would be very useful; and I believe in Bombay, where the system actually exists, it is found very useful; but practically speaking, the pressure of business in any such Court is so great, that you cannot spare the men for the duty. The ground to be travelled over, the difficulties and obstacles in the way of travelling, and, therefore, the time and expense of such journeys would be so great, that on the whole at present, till things are very much changed, we are obliged to trust rather to the reports from the local authorities; but I am far from saying, if such a system were practicable, that it would not work very well.

3370. Lord *Elphinstone.*] Do the Judges of the Sudder Court at Bombay go on circuit?

They do; there is one always on circuit, who goes out under the name of a Judicial Commissioner. One goes north, and then the next year another

F. J. Halliday, Esq.

8th April 1853.

goes south. They have certain duties assigned to them on the circuit, and they make very useful and interesting reports, on their return, to the Court and to the Government.

3371. Lord *Wynford.*] It has been proposed to the Committee that a Court of Appeal should be formed by a combination of the Sudder Court and one Judge or two Judges from the Supreme Court; would that meet your views as final Appellate Court?

With the addition of one eminent Native Judge.

3372. Would that be a fair substitute for the present right of appeal to the Privy Council in England?

I think it would. I am not myself disposed to attach any importance to the appeal to the Privy Council.

3373. It is a source of very great expense and very great delay, is not it?

It is.

3374. Are you aware that, before the Judicial Committee of the Privy Council was established upon its present footing, there were a vast number of appeals waiting for determination in England?

I am well aware of that.

3375. And that it was thought necessary to have them brought to a hearing by putting the Government to the expense of carrying them through?

Yes.

3376. That being done, those appeals immediately fell off to nothing, did not they?

I am not aware of that.

3377. Lord *Monteagle* of Brandon.] Has there not been a case of late, in which the importance of the appeal to the Privy Council upon certain great and practical questions has been shown; I refer to the question of land resumptions?

To answer that question properly, I ought to have gone into that case and formed an opinion upon it. I may have an opinion upon it, but not formed after sufficient examination; and I am unwilling to give an opinion upon such imperfect knowledge.

3378. Lord *Mont-Eagle.*] Do you think the appeal to the Privy Council ought to be continued?

I do not.

3379. *Chairman.*] Do not you think some distinction might be made: there are now appeals to the Privy Council in this country, both as regards facts and law: is it possible for the Privy Council to review the decision of the Indian Courts upon matters of fact in a satisfactory manner?

It is as easy for them to do it upon matters of fact as it is for the Courts of Appeal in India to do it. It is not very easy of course, but still it is quite as easy for them as for Courts similarly situated; namely, the Courts of Appeal in India.

3380. Do you not think, considering the immense expense of bringing an appeal to this country, and the difficulty which has been adverted to existing, whether it be more or less than is felt by the Supreme Court in Calcutta, it would be a good thing to restrict appeals to the Privy Council to matters of law?

I think any restriction upon the right of appeal to the Privy Council would be an advantage; I am prepared to go further, and abolish it altogether; I am speaking of appeals from the Courts of the Company.

3381. Earl of *Ellenborough.*] There is at present on the Judicial Committee of the Privy Council a retired Judge from the Supreme Court, but there never yet has been any gentleman who had practised as a Judge in the Courts of the Mofussil, or in the Sudder Dewanny; do not you think it would be very advantageous to have some person practically acquainted with the law in the Mofussil placed on the Judicial Committee?

I think it would. If the appeal to the Privy Council is to be continued, I think that would be an improvement; but after the sifting which a case must

have

F. J.
Esq.

8th April 18

have gone through in the Appeal Courts in India, especially if they were improved in the manner which I imagine they admit of, no further appeal is, in my opinion, of any real advantage.

3382. Lord *Monteagle* of Brandon.] Do not you consider that it might be of use, in reference to keeping up a continuity of decision and the authority of decision, that even if it were found expedient to limit the right of appeal as you suggest between the parties, the Courts in India should have the power of remitting to this country cases upon which there was grave doubt entertained in order to obtain the decision of the highest Court of Appeal, namely, the Privy Council?

Such cases in the administration of justice in the Courts of the Company occur but very rarely. The thing is so different from what might be supposed to occur in an English Court, or a Court acting under the English law, that I can hardly imagine it is necessary to keep up an Appeal Court in England for the sake of such very rare cases of that kind as might be supposed to occur.

3383. Take as an example a possible class of cases, without asking your opinion upon the resumption question: suppose a case to occur in which a considerable amount of local interest on the part of the people of India was at issue in contest with the Government of India, before whose Courts they were pleading; do not you think, in cases of that description, it might be important to obtain the decision of a Court that, from the superiority of its position, and its perfect independence of local interest, would give a judgment which would be generally satisfactory and acquiesced in?

I think such cases, which I do not deny might possibly exist, occasionally would be much better provided for by having at the head of the Chief Court of Appeal in India an English lawyer, who would be perfectly independent, and by having a carefully selected Native who would have sympathy with his own countrymen.

3384. Earl of *Ellenborough*.] Do not you think it was advantageous that the cause of the Raja of Benares against the Government of India should be decided in the Privy Council, involving as it did the payment of a very considerable sum of money, more than 50,000 *l.*?

I dare say there are individual cases in which it is an advantage. I do not doubt that there may be occasionally errors committed by the very highest Court in India, and those errors may be set right on appeal; but I doubt very much whether any single case would justify the keeping up the present appeal to the Privy Council. There may be cases in which the Privy Council may be wrong, and one would like to go further still.

3385. Lord *Wynford*.] The Committee collect from you that you think the right of frequent appeal in India is a cause of expense and delay, and in some cases leads to a denial of justice?

I think so.

3386. In how many instances, or to how many Courts, would you permit the right of appeal upon a decision which had been given?

My notion, first of all, is, that with respect to a very large part of the litigation which now goes on in our Courts, there need be no appeal at all; all that I would transfer to the Courts of summary jurisdiction. Then, with respect to the remnant, which would be cases requiring more care, being more important and more complicated in their interest, I think it would be quite sufficient to have one original judgment and one appeal, and in matters where a peculiarity of law or practice was concerned, a special appeal; beyond that I should think it unnecessary to go.

3387. And that appeal should be final?

I think so.

3388. Lord *Monteagle* of Brandon.] You have described certain examinations to which the Native Judges are subjected before they are appointed; are there any similar examinations to which the young civil servants of the Company are subjected in India before they are appointed to judicial functions?

There are.

F. J. Halliday, Esq.

8th April 1853.

3389. Will you describe them?

There is, first of all, an examination in the languages, which is of a superficial nature, when they leave the College of Fort William. Up to quite a recent period that was the only examination. Within the last two years a very strict system has been introduced, by which young men, after having been two years out of college, as it is called, and employed in subordinate situations in the interior, before they can receive any promotion are subjected to a second examination, which is one of considerable strictness, both as regards the vernacular languages, and the rules, regulations and practice of the offices in which they have been employed, and are to be employed. After that, and before they can be promoted to the office of Magistrate, they have to undergo a third and very strict examination—in my judgment, at present, too strict an examination; so much so, that last year, out of 20 who came up, or thereabouts, only seven passed.

3390. Who are the examiners?

The examiners are official persons at the Presidency, both English and Natives. They are actually examined in the interior; they are examined by written and sealed papers, which are transmitted to the official persons in the interior, great care being taken against the possibility of any trick. They are laid before the young men, who are required to give written answers. Those answers are sealed up, and transmitted to the examiners in Calcutta, and by them reported on. They are also called on to show a very complete knowledge of the vernacular languages, both in the way of reading and dictation and in writing, even to the extent of writing off a long decision upon a question read to them in the Native language before the examiners in the interior; and the manner in which they do this is also reported to the Central Committee.

3391. Does the examination to which the young civil servants are subjected, in the way you have described, differ in the case of those who are about to undertake judicial functions from the examination of those about to undertake political or revenue functions?

The rule is, that no man shall be appointed a Magistrate who has not gone through those examinations, and as, in the general line of service, every man must go through the grade of Magistrate, except the few who go into the Political Department, almost every man must of necessity undergo an examination.

3392. Earl of *Ellenborough*.] Who are the members of the Central Committee?

I cannot accurately state them; but I can state that there is a Judge of the Sudder Court; there is a member of the Revenue Board; there is a Judge of the zillah of the 24 pergunnahs; I think the Commissioner of the 24 pergunnahs is also a member; and a Principal Sudder Amin or two of the 24 pergunnahs, being Natives, are the remainder. The Registrar of the Sudder Court is the Secretary to the Committee, and there may be one or two others; but those are the chief members of the Committee, if not the whole.

3393. Is the security taken against any misconduct which is generally taken in examinations of that description, that of not allowing the signature of the individual to be affixed to his answer; a motto, for instance, instead of a name?

No.

3394. Lord *Monteagle* of Brandon.] Is not there, also, a certain degree of preliminary instruction upon legal subjects at Haileybury?

There is.

3395. Who was the Law Professor in your time?

Both Sir James Mackintosh and Mr. Empson.

3396. If it has been stated, that that is a purely voluntary course of study, and that it does not form part of the necessary condition of a student at Haileybury, is that evidence correct, in your opinion?

I can only speak of it as it was 28 or 30 years ago, from my own actual knowledge. I do not think it would be quite correct to say, that it is merely voluntary; but there is not so great and absolute a necessity attached to obtaining proficiency in the knowledge of the law as in my judgment is proper and necessary.

F. J. Halliday, Esq.

8th April 1853.

3397. Is there sufficient time given to the subject at Haileybury, or is there more time, in your judgment, devoted to other subjects of pursuit than the public interests require?

I think so; I should be very glad myself to see the time given chiefly to the study of the law at Haileybury, and subjects of a cognate character fitting a man for the judicial office, and I should be glad to see the time now bestowed upon Oriental learning entirely devoted to other subjects.

3398. Do you think the principle is a just one, that the English portion of the education ought to be appropriated to those branches of study which can best be followed up in England, and that the instruction in Oriental languages should be given in the East?

Yes.

3399. There are means of instruction, to a considerable extent, provided in Arabic and in Persian, as well as in Sanscrit?

Yes; and in other languages besides.

3400. The Committee may conclude from your evidence, that it would be a desirable change to extend the time at Haileybury for the study of law and political economy, and general history, and such pursuits, and to diminish the time given to the Oriental languages?

Yes; I should like to see the time taken altogether away from the study of Oriental languages, and the time devoted to other purposes.

3401. Lord *Wharncliffe.*] If the study of Oriental languages were excluded, how would you provide for the acquisition of the necessary knowledge, in the case of young men who are destined to the interior of the country?

They would, either in Calcutta or in the interior, or partly in both, have much better means of acquiring the language than they have here.

3402. Do you consider it to be an objection, as many witnesses have stated it to be, that a young man should be kept in Calcutta after his arrival in India?

I think it unadvisable that he should be kept there too long, but not that he should be kept there for a moderate time. I do not think there is any harm in keeping a young man there for six months, or in cases where he shows steadiness and a desire to profit by the instruction he receives in Oriental languages, a little longer.

3403. Do not you consider that, in the majority of cases, it must expose young men to great risk to keep them in a Presidency town, even for six months?

It certainly does; but the risk is not so confined to the Presidency towns, that you get rid of it by sending the young man up the country. A young man disposed to get into debt may have less temptation in the interior, but he is by no means without temptation. On the other hand, there are advantages, when a man first arrives in India, in keeping him for a short time in Calcutta, where he may open his eyes as it were to the country, where he may meet with people who have been in all kinds of situations in all parts of the country, and acclimatize his mind, as well as his body, before he goes into public life, or is sent into situations where he may be shut out for years together from general European society.

3404. Is it found by experience, that young men who are detained in that way in the Presidential towns make such a profitable use of their time as might be desired?

A certain proportion of them do make a very good use of it, and a larger proportion might do so if it were made known to them that they were only permitted to stay there a precise time, and if some much stricter means were taken than are taken at present to ensure that they should make a good use of their time. At present they are very much left to themselves; they know that they may remain nearly two years in Calcutta without check or hindrance, and a great many of them naturally put off study to the last.

3405. Take the case of a young man sent into the provinces: the Committee understand you to say, that he would have no difficulty in obtaining instruction in the Native languages; in what shape would he obtain that instruction?

I do not, myself, think that a young man in all parts of India in the pro-

F. J. Halliday,
Esq.

8th April 1853.

vinces, or in most parts of India in the provinces, would have at first, till he got some insight into the construction of the language, such good means of learning the language in the interior as at the Presidency. In the interior there are no professional teachers; he would be thrown upon the result of accident and chance for a teacher at all, and he would be thrown upon the assistance of persons who have other connexions and other business, persons about the Courts for instance, or persons connected with business going on in the interior, with whom for many reasons it would not be desirable that he should be thrown into intimate communication.

3406. Earl of *Ellenborough.*] When it is intended that a young man should be employed in the Upper Provinces, do you retain him for some time in Calcutta?

At present he is retained. But if this system were altered, and if he were sent up, it ought to be in order to his being detained at Agra or some similar place, where there are means of giving him the instruction in the languages which he would require, upon my supposition of his getting none in England. And the society at Agra being a large one, it might be as well that he should go there, instead of remaining at Calcutta.

3407. He would there learn the language which he would require, would not he?

Yes.

3408. Lord *Wharncliffe.*] Why do you consider that learning the elements of the Native language would be more effectually accomplished in a town like Calcutta, than it could be accomplished in the colleges of this country?

Because in Calcutta or any Presidential town there are considerable numbers of Natives who have made it their profession to teach their own language to foreigners; such persons cannot be found in England at present. Besides, while a young man was learning the language through books from those instructors, in Calcutta he would at the same time be learning it by conversation with the Natives about him, and so have the means of obtaining benefit in both ways.

3409. Earl of *Ellenborough.*] He would not learn Hindoostanee in Calcutta by conversation, would he?

He might learn it, though not such pure Hindoostanee as in the Upper Provinces; but Hindoostanee is very largely in use in Calcutta, more so than any other language.

3410. Where does the young man live while he remains in Calcutta learning the languages?

A young man now receives an allowance for house-rent, and he goes and lives where he likes. Practically, three or four of them join together and take a largish house, and mess together during the time they are in Calcutta.

3411. Are there not buildings belonging to the Government where they may have lodgings?

No; there used to be, but in Lord William Bentinck's time that was done away with.

3412. Do they live much together like gentlemen at college?

It sometimes happens that they do, and it is sometimes observed that they do not; I recollect a period when it was observed that nobody knew where the young civilians were; that you met one here and one there; but they, somehow or other, got away into holes and corners; but of late they have lived a good deal together; three or four live together in a house; they live near one another, and associate together a good deal.

3413. Do not many of them live with friends or relations?

Not many of them; they do occasionally.

3414. Do any of them live in the fort?

I am not aware that any of them do.

3415. What allowance have they while they remain there?

Two hundred and fifty rupees a month upon their first landing, which is

F. J. Halliday, Esq.

8th April 1853.

increased to 300 rupees upon their passing an examination in one language, and remains at that standard till they quit the college, when they get 400 rupees.

3416. Do you think that in practice they live upon that income while they remain at Calcutta, so as to leave Calcutta without debt?

Of late years the practice of getting into debt by the young men in Calcutta has very much gone out; there are a good many young men in Calcutta now who get very little, and some not at all, into debt; it is astonishing how the practice of getting into debt has decreased within my knowledge; of course there are still some who do fall into difficulties, but even then what is now called excessive pecuniary difficulty is quite a joke compared to what it used to be in former times.

3417. What interest do they pay for the money which they borrow, putting all the different charges together?

I can hardly tell; it is generally understood that they pay a very high rate interest.

3418. They first pay interest, then commission, and then life insurance?

Yes, and a great many things; I have heard it stated at a large amount.

3419. Is it less than 18 per cent.; is not that the lowest rate?

I do not think I ever paid that amount when I was in college in Calcutta.

3420. What was the rate of interest at that time?

I think it used to cost me 10 or 12 per cent.

3421. That must have been without life insurance?

It was without life insurance. What I mean is, that all those expenses, though they do occasionally occur, are not indispensable; it depends upon whose hands the young man falls into, and the extent of his debt.

3422. Neither a Native nor a European would lend to a young student at Calcutta without having a life insurance as security, would he?

Perhaps not, now; they used certainly to do so in former days: the facility of getting money when you wanted it at Calcutta used to be something extraordinary; you had nothing to do but to go into a house of agency to which you had a letter of introduction, and say you wanted so much, and you would have it.

3423. Lord *Elphinstone*.] Do you think there has been an improvement in the behaviour of the young men since the writers' buildings were done away with?

I think their behaviour has improved as regards pecuniary difficulties and debts, but not otherwise; I do not see any change in any other respect.

3424. Earl of *Ellenborough*.] As regards the language which they learn, does not it happen that they sometimes learn a language which is not of any great use to them in conversation?

It does; for instance, in the Lower Provinces a man may learn Hindoostanee who afterwards will be employed in Bengal, where he will require only Bengalee, or *vice versâ*; that is a defect which requires some amendment.

3425. Do not they learn rather the language of science than of conversation?

They do; they learn the language of books too much; I do not know that that can be avoided at first.

3426. May it not happen that a young man who has obtained the highest prizes for proficiency in a language may be unable to give an order to his bearer in going up the country?

I think it is possible that may happen; but I think a man who had a good knowledge of the language in books would have the least difficulty afterwards in acquiring it for the purposes of conversation.

3427. Lord *Monteagle* of Brandon.] If he has shown habits of application and a real zeal for the acquisition of knowledge and the study of language as a book language, is not that the best pledge which you can have that he will be likely afterwards to excel in the application of that knowledge?

I think so.

3428. Lord *Stanley* of Alderley.] If the system of instruction in the Oriental

F. J. Halliday, Esq.

8th April 1853.

languages is not pursued at Haileybury, do you think it is of any great importance that the establishment at Haileybury should be kept up for the education of young gentlemen going out to India?

I do not think it is of importance to keep up Haileybury; all that is necessary for young men to know before they go to India may be acquired elsewhere than at Haileybury; and if they were subject to a strict examination in those branches of knowledge before they were allowed to go out, it would not signify where they were educated.

3429. Lord *Monteagle* of Brandon.] Is it not to some extent a restraint upon a mere arbitrary selection and use of the patronage of the directors that a certain period of time must be passed by a young man at Haileybury in the prosecution of study there before he is sent out to India?

It is a check, but not a sufficient check.

3430. Supposing no such establishment as Haileybury College existed, where would you have the examination take place, in India or in England?

In England.

3431. You are aware that, under the last Charter Act, a provision was made that there should be four candidates recommended for every vacancy; that there should be an examination of those four candidates, and that the admission should be given only to the most deserving one of the four?

I am aware of that.

3432. That was introduced subsequently to your leaving Haileybury?

Yes.

3433. You are probably aware that in the year 1837 an Act of Parliament was introduced, which suspended, with a power of reviving it, that fourfold recommendation?

I am aware of that.

3434. Supposing the establishment at Haileybury continued, do you think that fourfold recommendation which was adopted after great consideration, and was specially recommended to Parliament by the framers of the Bill, would be an improvement over the present mode of selection for the civil service?

I am not aware of the reasons which led to the alteration in the law; but, as far as I can judge, the fourfold nomination was a very good rule.

3435. Are you aware what were the causes which led to that change?

I am not in the least aware.

3436. Lord *Wynford*.] Would you extend the opinion to the military school which you have expressed with respect to Haileybury?

I do not know enough of it; but what I do know does not lead me to desire that it should be abolished.

3437. Lord *Wharncliffe*.] You said that you would recommend that the instruction in Oriental languages in this country should be entirely abolished; is it not the present system that a young man is allowed to choose two languages at his discretion to which to devote himself?

I am not aware at present what is the system; within the last few weeks a change in the system has been under consideration.

3438. That being the system, that choice must be made of course without any reference to the part of the country in which he is likely to be employed; do you think it would be possible to introduce a regulation by which, if the study of Oriental languages here were abolished, a young man might be sent out to Calcutta, and there receive immediately a prospective appointment to some part of the Provinces to which he should be sent after the lapse of six months, and that he should be required, during those six months, to apply himself to the particular languages which would be most required by him in those duties in which he would be engaged?

What now happens is this: a young man knows, when he arrives in Calcutta, whether he will go to the Upper Provinces or be retained for service in the Lower Provinces; if he goes to the Upper Provinces, he knows that he will require only two vernacular languages, of which one may be said to be merely a dialect of the other, Hindee and Ordu; it is no great matter to require him to master both; if he is destined for service in the Lower Provinces, he knows that he will

require

F. J. Halliday, Esq.

8th April 1853.

require Ordu and Bengalee; and it is no great matter to call upon a young man to acquire both those languages: I am desirous of seeing it made a prospective rule that no man should ever receive an appointment in any Province, in the language of which he had not passed an examination.

3439. Is it the fact now, that a young man, upon landing at Calcutta, is made aware of his destination?

Yes, as regards his destination to either the Upper or the Lower Provinces.

3440. Supposing him to have chosen in this country the study of two languages, which will be of no use to him in the part of the country to which he may be sent, he has to recommence the study of some other languages?

Precisely; that may occur, and it has occurred.

3441. Lord *Mont-Eagle.*] Has the young man the option to which part of the country he will be sent?

No; a distribution is made according to a certain proportion, and the known wants of each division: so many new comers will go to the Upper Provinces, so many to the Lower; and, according to the arrival of the young men, the choice is offered them.

3442. *Chairman.*] Will you state to the Committee what is the course which you think it desirable to adopt in order to fit a young man, after his departure from Calcutta, for future employment in the Judicial Office?

I think that he must go through the Revenue Department; the earlier stages of it undoubtedly. It is only in that department that he will gain that practical knowledge of the Natives, and their habits and customs, and ways of business, which it is necessary he should acquire.

3443. Earl of *Ellenborough.*] Were you, yourself, in the Revenue Department at an early period of life?

My earliest service in the Revenue Department was when I went as acting Magistrate and Collector to Rajeshaye, that was in 1830. Among the means of instructing Judicial servants in the knowledge of their business, so as to fit them for the Bench, I should be very glad to see the office of Registrar re-established. That was an office to which young men were appointed after they had been three or four or five years in the country, and in which they were allowed to decide small civil cases, subject to the revision of the Judge. They had an opportunity then of acquiring something of the habit of investigating and deciding civil cases, which they have not to the same extent now. The office was abolished by Lord William Bentinck, because he thought that those young men were learning at the expense of those whose cases they decided, who were mostly the poor: but there were great differences of opinion at the time as to the propriety of the measure; and I think, now the opinion generally is, that on the whole it is better that the young men should run the risk of mal-decision in those more unimportant cases, than that they should have no means of training at all at that stage of their service, which is very much the case now.

3444. Earl of *Ellenborough.*] Did not Mr. Courtenay Smith say, that it was like teaching surgery by dissecting a living body?

Something of that sort I have heard said.

3445. Lord *Wharncliffe.*] It has been suggested by some witnesses, that it would be desirable to re-establish the office of Registrar, without giving him a jurisdiction; making him rather an officer of the Court, and giving him plenty of employment of a ministerial nature, but not rendering him a Judge?

I have heard that suggestion made, but I cannot say that it appears to me at all a promising suggestion. The truth of the matter is, that a ministerial officer of any Court must be a man thoroughly up to all the business of the Court; up to the language of the people; up to the ways of the people about the Court, and up to all that is to be done and left undone; so that he may smartly and quickly put the thing before his superior, and have the business carried through. For a young man to learn Judicial business, by conducting such an office as that, seems to me to be quite hopeless; he might learn something, but he would put everything into confusion while he was doing so.

3446. *Chairman.*] Is it your opinion, that the offices of Magistrate and Collector should be separate?

F. J. Halliday, Esq.

8th April 1853.

No, it is not. I do not mean to say that if you had the means both as to money and as to men, that is to say, if you had sufficiently well qualified men in sufficient numbers to appoint to both offices, and the means of paying them all well, it might not be an advantage to have the business divided between separate hands; but, on the whole, it does not work well in this way; it causes the Magistrate's office to fall into hands too young to exercise it; whereas, when the Collector is a Magistrate, you are sure that at the head of the police of the district you have an officer of considerable experience and standing. For that reason chiefly, if not solely, I am desirous of seeing the offices of Collector and of Magistrate continue united. They are united everywhere but in the Lower Provinces of Bengal. As an experiment, some years ago the two offices were disunited there, and the disunion has had the effect which I have described, of causing the office of Magistrate to fall into inexperienced hands.

3447. Lord *Monteagle* of Brandon.] Do you think we can consider as quite satisfactory any judicial system which, in respect to judicial appointments, places men in the position of sitting as Judges of Appeal when they have never had any practice whatever in Courts of the First Instance?

I do not think it can be satisfactory.

3448. *Chairman.*] Do you see any advantage, or is there any objection to the system of removing the civil servants from one province to another?

It is liable to abuse, but it is not disadvantageous if carefully and judiciously done. There is no good in keeping a man all his life in one part of India; he gains experience and knowledge by removal, and he also brings experience and knowledge. But where it is abused; where men are changed, as has sometimes been the case, merely for their own advantage, from one district to another, and from one province to another, it is a very great evil, and leads to great difficulty and embarrassment.

3449. Earl of *Ellenborough.*] Acting appointments have been put an end to as much as possible, have not they?

They can scarcely be said to exist, except where they are unavoidable.

3450. *Chairman.*] Do you think, after a young man had been appointed to be a Registrar, supposing that office were re-established, he should be kept strictly in the Judicial line, and not be transferred from the Judicial Department to the Revenue Department?

I think, if you make such an arrangement as that, before the young man becomes a Registrar, he should have a sufficient practical acquaintance with the Revenue Department, and a sufficient participation in the advantages which that acquaintance brings; it would be advisable to keep him separate, and to carry him on in the Judicial Department only.

3451. Lord *Monteagle* of Brandon.] Dealing with it as a status and profession?

Yes; the mere passing nominally through the office of Assistant to a Collector would not, in a great many cases, give him sufficient experience.

3452. Earl of *Ellenborough.*] Did you ever, in India, meet with a single gentleman who did not maintain the same opinion?

I do not think I did.

3453. Lord *Elphinstone.*] Is not the experience which in the Lower Provinces of Bengal a man acquires in the Revenue Department, with respect to the habits and customs of the Natives, much less than in the Upper Provinces, owing to the different system of revenue management?

I have heard opinions given both ways. I have heard it even said that the Collectors in the North-Western Provinces have not more means of communicating with the Natives than those in the Lower Provinces, and sometimes less, because in the former they worked so completely through their Native Tehsildars; and that in the Lower Provinces the Collectors came more into contact with the Natives than in the Upper Provinces.

3454. Surely, when they go on circuit, they must see the head men of the villages?

Quite so; but they have to do that in the Lower Provinces too. In the Collectorships of the Lower Provinces there are almost always large portions of every district in the actual management of the Collector, either because the Zemindarry is the property of the Government, or because it is under attachment, or for other similar reasons. I have, myself, in Bengal, had the greater part of a district entirely in my own hands, managing all the ryots myself.

3455. Earl of *Ellenborough.*] How do you move about in the Lower Provinces, do you go in a palanquin from station to station, or use the tent?
Use the tent almost always, and occasionally boats.

3456. That, practically, brings you more into communion with the natives?
Yes.

3457. Lord *Wharncliffe.*] Supposing the regulation were that a young man upon his appointment to a registrarship was required to select one branch of the service as his permanent career, at what period of his service in India would that usually occur?
Seven or eight years after his arrival would be my notion of the proper time.

3458. The nature of that system would be, that about seven or eight years after a young man's arrival in India, he should be required to determine whether he would devote himself to the judicial line, or take the chance of the other branches of the service?
I am not quite sure about that being the system. As you have to manage such matters in India, you, perhaps, would have to put a man into the Registrar's office who might turn out afterwards unfit for a Judicial office.

3459. Earl of *Ellenborough.*] What would you do with him if he was unfit?
If he showed no such unfitness as to disqualify him for the office of Collector, there would be no harm in making him a Collector; if the unfitness was such as to unfit him for confidential employment anywhere else, you would not employ him.

3460. There are very few who are considered unfit for office, are there?
There are very few: it is one of the difficulties of the administration, as it is now conducted, but it is a difficulty which has been of late years very much got over, and it will be always more easily got over where the Government is strong; it is partly because of the weakness of the local Government that the difficulty exists.

3461. What do you mean by the weakness of the local Government?
Generally speaking, the Government of the Governor-general is a strong Government; the Government of the Deputy-governor is, generally speaking, a weak Government.

3462. The Deputy-governor of Bengal is always supported by the Governor-general, is not he?
He may, or he may not be; I have seen cases of both; in every instance I can call to mind, except one, he has not been employed with the full powers of the Governor; he acts only as a subordinate and a deputy, he has to refer all matters, especially matters of removal and patronage, upon which the vigour and strength of a Government, in the points of which I am now speaking, very much depend, and he is looked on by the whole of the service which he is appointed to control, and by the whole of the country over which he presides, as a secondary person entirely; a person who is here to-day and may be gone to-morrow; who is exercising such powers to-day, but which powers may be taken away from him to-morrow, and the eye of the community and of the servants of the Government is directed rather to the person who is above him, than to him. That creates weakness; and also it is the case that the person himself, in a great number of instances, has not been selected for any particular fitness on his part.

3463. When Mr. Bird was Deputy-governor, do you recollect a single instance of his being overruled?
That was the instance I had in my mind when I spoke of one instance in which full powers had been confided to him, but that did not the less prevent its being known that those powers might at any time be taken away.

3464. You are aware that all the great appointments were submitted before they were made, and in some cases explanations were asked, but that in no case was his opinion overruled?

I am

F. J. Halliday, Esq.

8th April 1853.

I am quite aware of that; but it is one thing for a man at the head of affairs to say, I will not appoint A. to such an office, though a senior, because I know him to be unfit, which a man who has full vigour and strength in his own hands for governing will do and can do; and it is another thing to have to write to a distant authority and say, for such and such reasons which cannot always be put satisfactorily upon paper, I think A. should be preferred to B., or B. to A.; it is the constant necessity of doing that which goes a great way towards weakening the hands of the local Government.

3465. Must not the Governor-general as Governor of Bengal, practically, be always to a very great extent in the hands of the secretary or of some adviser, because, in travelling about the country, and becoming personally acquainted with different officers, he must rest upon the judgment of others with respect to his selections?

For a certain time he must do so, no doubt; but that does not last long. I cannot say that I think, generally speaking, Governors-general have been long in such trammels, but they have exercised their own discretion, and have been usually quite strong enough for the purposes of good government.

3466. *Chairman.*] The Committee have received in evidence a history of the proceedings of the Law Commission, and the circumstances connected with the Macaulay Code, and the alterations which have been subsequently made in that code; will you state to the Committee whether you have formed any opinion as to the best mode of settling those questions now, so as to give to India the advantage of a general code?

The best mode that occurs to me of settling the question is to strengthen and improve the Legislative Council of India, and to leave it in their hands. I believe if that is done, that code, or a sufficiently good code, will in a moderate time be passed, and the legislation of India generally will be very much improved.

3467. Do you see any objection to a plan which has been proposed by one or two witnesses, that the matter should be considered here by a certain number of persons well conversant with the law and practice of India, and then sent out to the Legislative Council to be enacted?

I do not see any probability of a good result from such a plan; it would be merely acting over again what was acted by the Law Commission under great disadvantages. The Law Commission sat apart from the Legislative Council of India; they formed their own schemes, and sent them up to the Council, who were called on to pass them on the credit and responsibility of the Law Commission, which they were of course unwilling to do, or to go into the whole matter again *de novo*, which they sometimes had no time, and very often no inclination to do, or if they did, they travelled by a different road altogether, and often to different conclusions upon the measure put before them; and the end was that one body having small interest or sympathy in the measures proposed by the other, a great deal which was elaborated by the Law Commission came to nothing. If you were to enact that over again, by appointing a Commission in London, I believe you would come to very much the same conclusion. The Commission in London would perfect the schemes of the Law Commission, elaborate their own schemes, and send them out, probably, with a potent recommendation, which the Legislature in India would adopt or not, as it thought fit, but would not be the more disposed to adopt because they were accompanied with something like an order to carry them into effect, without their having been aware of the previous consultations and discussions which had taken place among those who made the recommendation.

3468. Earl of *Ellenborough.*] It would not be absolutely impossible to pass such matters here in the form of an Act of Parliament, would it?

So nearly impossible, that I can hardly think it could be called a practicable scheme; at all events, in matters of detail, there is not a single proposition of the Law Commission now pending which does not require some adaptation in order to set it going.

3469. Are not you aware that there never can be any code of laws enacted if it is to be expected that the Governor-general in Council is to look carefully into every part of it?

The Governor-general in Council, as now constituted—certainly not.

3470. *Chairman.*] In either case, whether the code was generally considered by a new Commission here, or referred to the Legislative Council to decide upon it, would it be desirable to limit the time in which that code should be declared law?

No; I do not think it would be desirable to do so; I imagine, if the Legislative Council were properly constituted, there can be no doubt that they would carry such a code into effect in a reasonably short time.

3471. Into how many languages would it be necessary to translate such a code, supposing it to be formed for all India?

Strictly speaking, into as many languages as prevail in India; and they are very numerous.

3472. Would there be any difficulty in the translation?

I do not think there would; there is no difficulty in translating any but the most technical and English-like laws into any of the Native languages.

3473. Would it be necessary to publish the code some time previous to the enactment of it, in order to give the Judges time to make themselves masters of it?

I should think not; the system of law is not so large as to require very great study before applying it.

3474. Earl of *Ellenborough.*] Would you have a Judge sit with a book in his hand, and turn over the pages to find what the law was as each case came before him?

In our Courts now, every Judge occasionally does that; it would be no surprising thing if he were generally to do that with the code.

3475. Lord *Broughton.*] You said that, if the Legislative Council were properly constituted, you thought those difficulties which have hitherto arisen, with reference to the passing of this code, would not occur; what do you mean by "properly constituted"?

I wish to have the Legislative Council enlarged; and I wish to introduce into it several functionaries as *ex officio* members, who, generally speaking, might be expected to bring to the business of legislation an interest in the matter, and a knowledge of what was required; with that enlargement, I should be glad to see the manner of conducting the business so far altered as to have it conducted orally instead of by tedious written minutes.

3476. Will you mention specifically what functionaries you would include in the Legislative Council?

The notion I have formed in my own mind is, that the Legislative Council might be constituted somewhat in this way the Governor-general and the Executive Council as at present, and in the Executive Council, I include the present fourth ordinary member, who, I think, ought to have executive duties, but whether he has or not, I would propose to include him in this Council; a member from Madras and Bombay; the Chief Judge of the Supreme Court and a Judge of the Sudder; a member of the Revenue Board; two or three of the present Secretaries to the Government in the Executive Department; and, perhaps, the Judge Advocate-general; making altogether from 12 to 15 members.

3477. This legislative body would be of course entirely distinct from the Executive Council of India?

Entirely distinct; the Governor-general having an absolute veto upon all their propositions.

3478. Earl of *Ellenborough.*] Have the Secretaries much time to give to legislative duties now?

At present one of the Secretaries to the Executive Government is Secretary to the Legislative Government. In that capacity he is called upon to do a large amount of duty connected with legislation. I think, perhaps, that the same time might be occupied by him as a member of the Legislative Council as is now occupied by him as Secretary to the Legislative Government.

3479. Lord *Wharncliffe.*] Would you have the members of the Legislative Council appointed from Home, or by the Governor-general?

My idea is, that they should be *ex officio* members; but two of them would be

F. J. Halliday, Esq.

8th April 1853.

selected, or might be selected either by the Governor-general or by the authorities here.

3480. Earl of *Ellenborough.*] Would not you consider it necessary that before the Governor-general gave his assent to a code, he should make himself acquainted with it?

I cannot think that the Governor-general is called upon to give his assent to all the minute details of a code of criminal or civil law. He may make himself master of the general principles, and assent to them, and see that there is nothing politically objectionable in any part of it, or correct it if there is; beyond that, if he had such a Legislative Council as he could trust to, I think he ought to trust to it.

3481. The Legislative Council so formed would not be very much superior to the late Law Commission, would it?

It would not be very much superior, except so far as it would be more numerous. My plan goes rather to incorporating the Law Commission, or something like it, into the Legislative Council. I have always thought that if the Law Commission had been incorporated into the Legislative Council, it would have been much more effective.

3482. Lord *Broughton.*] In the plan which you propose, would it not be necessary, this body being so numerous, that the Executive Government should have some representative upon it, in order either to lay before the body any scheme of the Government, or to make its objections to any law which might be proposed by any one of the members of the body?

Every member of the body, except the Judge of the Supreme Court, would be a servant of the Government actually nominated by the Governor-general; therefore, there is no fear of its being too independent a body by any means.

3483. *Chairman.*] In what mode would you propose to obtain the assistance which the Natives might afford to such a Council?

I know of no safe mode of obtaining that assistance, except as you obtain it now, second-hand, by consultation and correspondence, either directly on the part of the members of the Council with the Natives of their acquaintance, or through the officers in the interior, which is the manner in which it is now done.

3484. You think it would not be desirable to have a Native in the Legislative Council?

As a method of obtaining the general opinions of any class of Natives, it would be impossible.

3485. Lord *Elphinstone.*] How would it answer to have a separate Council of Natives, which should be merely consultative, the members of which might be appointed by the Government, and referred to upon particular points, affecting particular classes or castes in the country?

To be an efficient Council it must represent a great many shades of opinion scattered throughout a great many provinces and territories. You could not bring such a Council together.

3486. The question did not refer to bringing people from different parts of the country together; might not such a Council be composed of people of different castes and different creeds at Calcutta; for Bengal, for instance, having another at Agra for the Upper Provinces, and so on?

It would be very difficult to collect in Calcutta any sufficient representation of the shades of opinion even in Bengal only, and so also at Agra for the North-Western Provinces. Putting aside the great distinction between the Hindoos and Mahomedans, the Hindoos are of castes and classes innumerable; they are of all kinds of clubs, and social and party shades of feeling, each having a different idea of public and private matters from another. The Mahomedans also are very much divided; the distinctions, in fact, are so numerous, and the differences between them so great, that I can hardly imagine how you could obtain any representation, which would be at all satisfactory, of the opinions of any class.

3487. Lord *Monteagle* of Brandon.] There would be nothing in the plan which you have suggested which would restrain the Government of India, or the members

F. J. Halliday, Esq.

8th April 1853.

members of the Legislative Council, extended as you propose, upon any occasion they thought fit, from consulting Natives of learning and intelligence with respect to any special point?

They do so now, incessantly; the Natives exercise, indirectly, very much influence over legislation in India. It is very unusual to legislate at all without correspondence with the interior, by means of which you have the opportunity of indirect consultation with the Natives.

3488. Would you consider it expedient that the system which you have described should be continued?

I think so.

3489. Earl of *Ellenborough.*] Could you form no such bodies at Muttra and Benares?

I think such a body could be formed; a body of Hindoos might be formed at Benares, and possibly at Muttra; it would be very difficult, however, to collect a body of Hindoos at Benares who would represent anything but the opinions of their own particular caste or section.

3490. *Chairman.*] Would the Legislative Council, as you propose to frame it, have any other function to discharge except the making of laws?

The official members would have their own offices to attend to, but, as a body, they would have no other functions.

3491. Have they no others at present?

The Legislative Council is composed of the Executive Council, with the addition of the fourth member, who is appointed from England, who has no duties but those of Legislative Councillor.

3492. Earl of *Ellenborough.*] If he had, he would not have much time for his legislative business, would he?

Not as the matter is now managed, the whole drudgery of legislation falling upon him alone; but with the Council enlarged as I propose, and the business distributed, he might have more leisure.

3493. Lord *Broughton.*] The Committee understand you to say, that under present circumstances, you would not recommend that the question of the code generally, with its more important details, should be settled by a Commission in England?

I see no advantage in settling it here: I think it is sufficient that it should be referred to the Legislative Council in India, with authority to settle it there.

3494. Under present circumstances, supposing no such important change as that which you suggest took place, do not you think that it would be better that it should be settled, or attempted to be settled, in England?

Under present circumstances, my strong belief is that the penal code will be years before it passes; it all depends now upon one man; it is made over to the fourth member of Council, Mr. Peacock, who has a great deal upon his hands, and is unwilling to take up, as he may reasonably enough be, a large measure of that sort, and not give to it full attention, but who cannot be expected, for a long time to come, to give to such a measure the attention which is required.

3495. As you do not think it probable that, under present circumstances, even with a man of Mr. Peacock's experience and ability, the code should be settled in India, what is your objection to its being settled in England by authorities, many of whom are perfectly acquainted with the law of India, so far as long residence and experience in India can enable any man to be acquainted with it?

I think it would be better to settle it here by such a body, than to wait for its settlement by the Legislative Council in India, as at present constituted; all I intended to say was, that it would be better that it should be settled by the Legislative Council in India otherwise constituted.

3496. Are you aware that the Government of India have, on more than one occasion, referred the question to the Home authorities, and requested them earnestly to settle it at once?

To give their sanction to its passing.

F. J. Halliday, Esq.

8th April 1853.

3497. *Chairman.*] Do you think that there ought to be a power given to each Presidency to pass Regulations?

I would rather see the legislative power centralized; I can suppose it advisable that a Presidency should have the power, in cases of emergency, of passing a Regulation for a particular and pressing matter, subject, of course, to confirmation by the legislative authority of the central Government.

3498. Earl of *Ellenborough.*] You would not, in any case, allow the power of passing Regulations to extend to taxation?

No.

3499. Lord *Wharncliffe.*] Supposing the Legislative Council to be re-constituted in the manner which you have suggested, would you recommend that their discussions should be in public?

No, certainly not.

3500. Earl of *Ellenborough.*] Do not you think that the larger you made the Legislative Council, the more the members of it would talk, and the less business they would do?

It would require very careful management on the part of whoever presided, whether the Governor-general, or anybody else.

3501. *Chairman.*] Would you have a Native employed as an Assessor to the Legislative Council, without the power of voting?

No.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned till Tuesday next,
Two o'clock.

Die Martis, 12° *Aprilis* 1853.

LORDS PRESENT:

Marquess of SALISBURY.	Lord COLCHESTER.
Earl of ALBEMARLE.	Lord WHARNCLIFFE.
Earl of HARROWBY.	Lord WYNFORD.
Earl of ELLENBOROUGH.	Lord ASHBURTON.
Lord ELPHINSTONE.	Lord MONTEAGLE of Brandon.
Lord COLVILLE of Culross.	Lord BROUGHTON.
Lord MONT-EAGLE.	

LORD ASHBURTON in the Chair.

Evidence on the Government of Indian Territories.

FREDERICK JAMES HALLIDAY, Esquire, is called in, and further examined as follows:

F. J. Halliday, Esq.

12th April 1853.

3502. *Chairman.*] WILL you give the Committee some account of the state of the gaols in India; are they in a satisfactory condition?

They are not in a very satisfactory condition, particularly in the Lower Provinces; they are better in the North-Western Provinces, where an officer has been for some years past specially appointed to look after prison discipline exclusively, and to manage the gaols; in the Lower Provinces great pains are taken with the physical welfare of the prisoners, so much so, that it has been a complaint that they are made too comfortable; but little or nothing has been done towards classification, or towards the introduction of any improved system of discipline, chiefly because of the great expense that it has been always expected would attend any attempt to improve them in that direction. Some years ago a Committee, collected by Lord Auckland, made a report on the subject of prison discipline in India, together with suggestions for improvement; but the pith of all those suggestions was increased outlay for increased building, and larger means of classification; and partly because that has been impossible in the financial condition of the Government for some years past, and partly because, since that report was sent in, people have doubted whether the suggestions of the Committee were really the best that could be adopted, very little of the kind has yet been done: in two places an experiment has been made towards a partial erection of penitentiaries upon the plan proposed by that Committee; one in Calcutta, where separate cells have been built in the house of correction there; and one at Patna, where a small penitentiary has been built, and the experiment has been partially tried. Excepting that, and also excepting the alteration in the manner of feeding and messing the prisoners, which was made in consequence of the suggestions of the Committee, and which has had rather important effects, the gaols remain, in the Lower Provinces, very much in the same state in which I have known them for a great number of years past. As to messing, the prisoners are not now allowed to purchase and to cook their own food, but it is served out to them, and cooked for them in gangs by cooks appointed from among the prisoners, or sometimes paid for the purpose by the Government; this has been a very great addition to the penalties of imprisonment, and has

F. J. Halliday, Esq.

12th April 1853.

been so felt by the prisoners, who in several instances have rebelled against it at the cost of their lives; and there have been some serious attempts to put down this new system of messing, on the part of the prisoners, by open force, only repressed by calling in the military and firing upon them.

3503. Earl of *Ellenborough.*] It has, in fact, in many instances, been a violation of caste, has not it?

The prisoners' complaint in all the cases has been that it was a violation of caste; very careful endeavours were made to prevent its being so, and it is probable that the real objection of the prisoners to the new plan was the greater severity that it introduced into their punishment; but there may also have been cases of interference with caste; and there has always been some likelihood that, owing to carelessness or ignorance on the part of the administrators of the system, caste might at times be interfered with, so that it is no wonder that the prisoners made it a strong subject of objection.

3504. Lord *Broughton.*] Did not the Home Government send out some instructions, with reference to this system of messing, directing that it should not be adopted where there was reason to think that any objections would be made by the particular class of prisoners to whom it was to be applied?

No doubt such instructions were sent out, and, as far as the Government have been able to prevent it, no interference has taken place with caste, and nothing has been wilfully done that could interfere with caste; what I was saying was that it was probable that there had been cases of interference unknown to the Government, and that there was also some risk of such an interference with caste, arising from carelessness or ignorance on the part of the local administrators.

3505. Earl of *Ellenborough.*] Was not one of the reasons of the rising at Benares, in reference to the management of the prisoners in the gaol, supposed to have been, that it interfered with caste?

That is a matter I am not personally conversant with. I heard of a rising at Benares before I left India, but it was under the government of Mr Thomason, and I am not aware of the details. There were two serious risings, one at Patna, and one at Chuprah; on both of which occasions the military had to be called in; and on one occasion, that at Chuprah, which was by far the most serious, the Zemindars of the district showed a decided disposition to side with the convicts, and to take an actual part with them in opposing the Magistrate by force.

3506. Lord *Monteagle* of Brandon.] When you speak of the military being called in, did loss of life follow; were they constrained to fire?

They were constrained to fire, and considerable loss of life followed. I have mentioned one instance in which an attempt has been made to improve the prison discipline in India. Another has been a modification of the manner of working the prisoners. Formerly they were all worked in gangs upon the public roads and public works; sometimes in the interior of the district at a distance from the gaols; sometimes in the Zillah stations. It was found that great abuses followed the working of the prisoners in the interior, at a distance from the Magistrate and from the gaols. They were of course entirely under the superintendence of the Native guards, who are almost always found to be corrupt, and who allowed those who could pay for it all kinds of improper indulgences, even to the extent of allowing them to return to their homes, in order to bring back the means of corrupting their guards; thus it often happened, that with those who could pay for exemptions, work was a nullity, and the whole weight of the punishment of hard labour fell upon those who were unable to pay. The Government has now prohibited the working of prisoners at a distance from their gaols, and they are only allowed to be worked in gangs in the station, or so near to it that they can return every night to the inclosure of the gaol. An endeavour has also been made to introduce task-work within the gaols, or within inclosures in the neighbourhood of the gaols, so as to put an end to the spectacle of prisoners working in chains upon the roads, and also to make the work of the prisoners more severe, and, if possible, profitable to the State. This has in some cases succeeded where circumstances were favourable, or the turn of the local officer in charge of the gaol was towards operations of that kind; but, on the whole, it cannot be said to have been successful; and very often the work of the prisoners, especially in the smaller stations, was found to interfere prejudicially with the industry of the working classes of the neighbourhood.

3507. Earl

F. J. Halliday,
Esq.

12th April 1853.

3507. Earl of *Ellenborough.*] Is there any gaol in the Upper or Lower Provinces, with the exception of the gaol at Calcutta, in which a European could be confined without danger to his health?

Yes, there are many such gaols; but it has been usual, when a European or *quasi* European has had to be confined in a gaol, to give him the gaoler's rooms over the gate, or some rooms capable of being set apart for the purpose in like manner; and in building new gaols, it has always been an endeavour to have a fit place for the confinement of such persons; but the want of such a means of confinement has in some instances been felt, and I have known a case in which a *quasi* European convict had to be lodged in a small bungalow built outside the gaol for the purpose.

3508. Those buildings are in general narrow and low, and with flat roofs, are not they?

They are not very low.

3509. *Chairman.*] Is the mortality in the gaols considerable?

No, it is not. Whenever the prisoners are moderately worked and well fed, sickness and mortality, excepting upon incursions of the cholera or epidemics of that kind, are comparatively light; but it is a common remark connected with gaols, in the parts of India with which I am acquainted, that the moment you begin to enforce something like what we should think proper severity; the moment you begin to reduce or impoverish the diet and to make the confinement closer, and to work the prisoners harder, they die off; and that of itself has been found a great obstacle in the way of any real improvement in prison discipline in India. The constitution of the Native prisoners apparently will not bear it; they become depressed, and sink under what we should think but a moderate amount of discipline within a gaol, and especially they will not bear any reduction or impoverishment of food; on the contrary, it is a thing now well known, that they require for the support of life better feeding in our gaols than they do out of the gaols.

3510. Lord *Monteagle* of Brandon.] Are you aware that the same result occurs in our own prisons here?

I was not aware of that. This has led many people in India to call out against the system of feeding the prisoners and treating them better than they would be treated and fed in their own cottages; but the thing seems almost unavoidable, though occasionally it may have been carried to too great an extent.

3511. Earl of *Harrowby.*] Is corporal punishment inflicted in any cases?

Corporal punishment can scarcely be said to exist as a secondary punishment; it was entirely done away with some years ago by law; but more recently, it was re-enacted for petty cases of theft by boys, and under peculiar limitations.

3512. Is it peculiarly injurious to the constitution in that climate?

I am not aware that it is at all, but it leaves indelible marks; and for that reason, principally, it was done away with.

3513. *Chairman.*] Is corporal punishment ever resorted to in the Native States?

I do not think that our way of inflicting it by stripes is resorted to in the Native States; they mutilate the body.

3514. Is not it administered on the soles of the feet in some parts of India?

No, not that I am aware of.

3515. Earl of *Harrowby.*] Is corporal punishment peculiarly regarded as an insult and affront among the Natives?

A blow is resented as a great insult and affront among those tribes and classes of Indians who show any amount of courage.

3516. Lord *Mont-Eagle.*] Is it more of an insult there than it is in Europe?

I should think quite as much so: to strike a Rajpoot, or a man with arms by his side, in the North-Western Provinces of India, would be a rash experiment.

3517. Earl of *Harrowby.*] What is the kind of labour resorted to within the gaols?

F. J. Halliday, Esq.

12th April 1853.

Within the gaols, the prisoners have been employed in making paper, and carpets and rugs, and tents and baskets, and a variety of things of that kind.

3518. When they cooked their own food, instead of having messes, they did much less work, did they not?

Certainly; it took a long while, and it was supposed to be a great enjoyment to them; so that taking away the cooking was looked on as a very serious privation; the Government has persisted in enforcing it, because it is satisfied that in that way stricter punishment can be inflicted without doing any real harm; care being taken always to prevent the infraction of caste.

3519. Could not you easily provide for the difficulty, with respect to caste, by having very high caste cooks, who might cook for the lower castes?

That has been endeavoured to be carried out, and to a great extent it succeeds, but they carry their divisions of castes into very minute classes. It is not every Brahmin who can cook for every Brahmin; there is a particular class of cooks who can cook for that class only: the thing is much more minute than it was supposed to be before the experiment was made. I recollect when it was intended to introduce this system into the gaols of the Bahar Provinces, it was a matter of great surprise how many subdivisions arose, which nobody had ever heard of before, but which were admitted as such after full inquiry; though some, no doubt, were got up by the prisoners themselves in order to throw obstacles in the way of the scheme.

3520. Has not it sometimes occurred in a ship carrying out Coolie emigrants, that no cook at all could be found; that the only man who could cook would not?

I dare say it may have been so.

3521. Lord *Elphinstone*.] Was not there a serious outbreak at Gya in consequence of a supposed infraction of caste?

Yes, there was.

3522. Earl of *Harrowby*.] Do the Native Princes very much regard caste in their dealings with culprits?

I have no great knowledge on that subject; but I suppose they do.

3523. Earl of *Ellenborough*.] Do they imprison at all in the Native States?

I do not think they do at all.

3524. Was not there one occasion when a number of prisoners broke out of the gaol at Agra?

Yes, a very important occasion; then also there was a great loss of life.

3525. Lord *Wharncliffe*.] From what did that outbreak arise?

I am not precisely aware what it arose from; it was out of my jurisdiction.

3526. Under the system which you have described as prevailing in the gaols in India, the improvement which has taken place in the diet, and in the lodging and the light work which is given to the prisoners, did you consider that imprisonment has any great terror as a secondary punishment?

I think it has: I have met with men who pretended to say that it had none; but as far as I have any knowledge of the Natives, it has great terrors for them.

3527. In what respect do you think those terrors operate upon the minds of the Natives?

They would rather not get into gaol if they could avoid it. I do not mean to say, that in every instance the terror is sufficient to overcome the propensity to crime.

3528. Is it the mere confinement, or the discipline of the gaol, or what is it that produces the terror?

Both together; the whole effect of imprisonment is unquestionably the infliction of very considerable privation and pain; it was so even before this alteration in regard to messing, and even independently of any means we can use for the purpose of inflicting a proper amount of pain and privation upon offenders, because the corrupt practices of the Natives in charge of gaols lead to a great deal of privation, and suffering, and oppression, which add very much to the

painfulness

F. J. [illegible] Esq.

12th April 1853.

painfulness of the imprisonment, even beyond what the Government itself might desire to inflict.

3529. Earl of *Ellenborough.*] On the other hand, a Brahmin of high caste hardly suffers anything, except the personal restraint of not being able to leave the walls, does he?

It would very much depend upon the gaoler, and the people under him. If the gaoler were a Mahomedan, I am not sure that it would be so.

3530. The question refers to the conduct of the other prisoners towards him; they would alleviate his sufferings to the greatest possible extent, would not they?

No doubt they would.

3531. Lord *Wharncliffe.*] Do the gaols contain any class of prisoners except convicts?

Yes, they contain prisoners for debt, who are kept as far as possible separate from the others, and they contain persons whose cases are under investigation, who also as far as possible are kept separate.

3532. Is there a process corresponding to that of commitment before trial in this country?

Yes.

3533. And such prisoners are separated from the others?

Yes, as far as possible; indeed, in almost every instance they are completely separated; but I could not go the length of saying, that in every case all over the country the separation is complete.

3534. What is the longest period of imprisonment which is inflicted as a punishment?

For life. That punishment, however, has been as much as possible commuted for transportation for life; but there is a very large body of convicts imprisoned for life, and the punishment is still inflicted occasionally, though, under the orders of the Home Government, it is diminishing. There is one gaol in the neighbourhood of Calcutta where there are from 1,500 to 2,000 prisoners for life.

3535. Lord *Monteagle* of Brandon.] What is the place to which transports are sent?

To Arracan, the Tenasserim Provinces, and the settlements in the Straits.

3536. Is there any arrangement made there for the custody and care of the prisoners?

Yes; the system of punishment in transportation in the Straits is deserving of the highest approbation. As far as I know, it is only among convicts transported for life to those settlements that you find cases of complete reform. They have a system of classes, by which a man beginning as a convict in the lowest class rises by good behaviour, and after long intervals from one class to another, till in the end he may become entirely emancipated, though without permission to leave the Straits settlements. I have myself seen instances in the Straits of persons doing very well in life, who have been entirely reformed by this discipline; and it is to be supposed that the same effect is being produced upon others who are undergoing the same method of punishment.

3537. Have any official reports been made in respect to the regulations under which that system of transportation is carried on, and its results?

I am not aware whether any reports have been made as to the results, but the regulations have been reported to the Home authorities and approved.

3538. Earl of *Ellenborough.*] To what place are they transported; is it to Singapore?

There are large gaols at each of the stations, one at Singapore, one at Malacca, one at Penang, besides those in Arracan and Tenasserim. They are first of all put into those gaols, and employed upon the public works, and as labour is very much wanted in those settlements, their labour is extremely valuable; and there is a call to send convicts there rather than to omit sending them.

3539. How many of them are there?

In the Straits altogether I should think there were fully 2,000. I dare say

F. J. Halliday, Esq.

12th April 1853.

that is under the mark; there must be that number also in Arracan and the Tenasserim Provinces.

3540. Lord *Montcagle* of Brandon.] Are they employed on works which are useful to the settlement to which they are sent?
Yes.

3541. They are not a cause of expense to the settlement?
It is a complaint, but it is merely a matter of figures upon paper, that the expense of those prisoners and the guarding of them are charged against those settlements; practically, in considering the expense of the settlement, everybody puts that out of the question, but the charges do appear in the account against the settlement.

3542. The reception of convicts at those settlements is not made a matter of complaint?
Very far from it.

3543. Earl of *Harrowby.*] Is it in the improvement of roads or the erecting of buildings that they are employed?
In improving roads, and making docks and piers, and every public work which is to be done.

3544. Lord *Wharncliffe.*] Compared with the punishment of death, is the punishment of transportation considered more or less terrible?
With all the Natives I have had to deal with, I am clearly of opinion that the punishment of death is the more terrible.

3545. Crossing the seas in some respects involves a violation of some of the rules of caste, does not it?
It is quite a violation of caste; and, owing to transportation beyond the seas in our system being always for life, to which we wisely adhere, so that the convicts scarcely ever come back again; the idea of transportation for life beyond the seas is invested in the minds of the Natives with a mysterious kind of solemnity and horror, which adds very much to the effect of the punishment.

3546. *Chairman.*] Under all circumstances, does the convict receive a ticket of leave?
Within the settlements the convicts receive what are equivalent to tickets of leave; after they come into the class which is allowed to go free with certain limitations, they receive permission to go abroad; sometimes they are employed in charge of other convicts, and ultimately may be actually without any control but the necessity of reporting themselves from time to time to some authority.

3547. Lord *Mont-Eagle.*] When a prisoner is committed to gaol to take his trial, can he be released on bail in any way?
According to the nature of the offence; a great majority of cases probably are bailable.

3548. Lord *Monteagle* of Brandon.] Is it not frequently the case, that you are obliged to include within your prisons witnesses as well as persons charged with crime?
It is the rarest of all occurrences; in a long experience, both directly and indirectly, in the administration of our judicial system, I can scarcely charge my memory with more than a very few instances; sometimes they were cases in which the Magistrate was to blame, and was blamed; sometimes instances in which it was absolutely necessary to detain witnesses for the interests of justice.

3549. Lord *Wynford.*] Are there any cases of lunatics being detained in confinement?
Yes; there are lunatic asylums in various parts of the country.

3550. Are they ever detained in those common gaols?
Never; they are transferred immediately to lunatic asylums.

3551. Earl of *Harrowby.*] Are the subordinate officers of the gaols men who have been in the army?
Very rarely; they are men who have been employed about the police chiefly; sometimes they are persons who have spent their life in that vocation.

3552. Would

3552. Would it be considered unsuitable for men who have been in the Native army to take such situations?

No, not at all; I have known frequent instances in which men who have been in the Native army have applied for situations of the kind, and have got them.

3553. Would not they be the most fit persons for such situations, by character and habits of discipline?

Not always; in the Lower Provinces they would be entirely ignorant of the language of the people with whom they had to deal, and that would form a very serious obstacle.

3554. Is no part of the army drawn from the Lower Provinces?

No part.

3555. Lord *Colville* of Culross.] From what class of persons are the superior officers taken?

Generally speaking, they are such persons as we make Darogahs and Tannahdars of—Mahomedans or Hindoos.

3556. Are they all Natives?

No; here and there, especially of late years, there has been a disposition in the larger gaols to employ Europeans, or *quasi* Europeans, and wherever this has been done, it has been with great success; but it is expensive, and can only be managed where the number of prisoners collected together is sufficient to warrant the expense. The gaol is always in the immediate charge of the Magistrate of the district, and the gaoler is a subordinate officer, who takes instructions from him upon all subjects. The Magistrate usually visits the gaol at least once a day, and sometimes oftener, and, in fact, directs every part of the management.

3557. Earl of *Harrowby.*] Is that the case in Calcutta as well as in smaller places?

No; in Calcutta the system is different; the gaol is under the Sheriff and the Magistrates of Calcutta.

3558. Is the gaoler there of a superior order?

There the gaoler is a superior person.

3559. A European?

Yes; generally a picked retired serjeant. In the two instances which I have in my mind, the man now in charge of the Calcutta gaol and his predecessor, the qualifications of both of them were considerable, and one of them became a candidate for the office of a Judge of the Small Cause Court; he is now the Chief Clerk of the Small Cause Court.

3560. *Chairman.*] Is he a covenanted or uncovenanted servant?

An uncovenanted servant; I believe he was an Irishman, of respectable family, who had enlisted in the army.

3561. Earl of *Ellenborough.*] In the Horse Artillery, was not he?

I am not sure in what branch of the service he was.

3562. *Chairman.*] Do you consider the state of the police to be satisfactory?

Not so satisfactory as I could wish.

3563. Will you state in what respects you consider it deficient?

The deficiencies are mostly inherent in the character of the people, and are such as I have no hope of seeing completely removed till the character of the people undergoes some very important change, in the lapse of many years. But there are some deficiencies, referable chiefly to the want of sufficient pay, which are in process of amendment, and will be further removed whenever the Government has it in its power financially to deal with the question as it ought to be dealt with. The truth is, that the subordinate officers of police are generally very much underpaid, and, being exposed to great temptations, are extremely corrupt.

3564. Earl of *Ellenborough.*] Will you mention each separate rank, and the pay of each?

Immediately under the Magistrate or Deputy Magistrate there is a Darogah or Tannahdar, who, till comparatively late years, was paid at the rate of 25 rupees a month; he has large powers, and is stationed in the centre of a jurisdiction

F. J. Halliday, Esq.

12th April 1853.

diction of 200 to 300 square miles; all reports are made to him in the first instance, and it is his business to investigate and report to the Magistrate upon every occurrence regarding the police which takes place within his jurisdiction, to pursue criminals and apprehend them, to take the complaints of prosecutors, and the depositions of witnesses, and to prepare cases for the investigation of the Magistrate; he is expected to be ready at all times to travel at a moment's warning to all parts of his jurisdiction, and he has powers and responsibilities which require good character and qualifications; his salary, up to a recent period, was not such as would pay his palanquin hire, still less any other means of locomotion; as a matter of course he was corrupt and oppressive, and a great deal of his corruption it was impossible not in some degree to overlook. Of late years those officers have been better paid; they now receive nowhere less than 50 rupees; another class 75 rupees, and another class 100 rupees a month; and opportunity has been occasionally taken of promoting the best of them to the situation of Deputy Magistrate; it is hoped that these means will produce, in the course of time, a very great improvement in the class, and in some few instances they have actually produced it, but as yet that can hardly be said to be generally the case. Under the Darogah is an officer called a Mohurur, or clerk, whose business it is to take down depositions in writing, and to keep the records belonging to the police station; he also undertakes precisely the same duties as the Darogah whenever the Darogah is not present, or when deputed by the Darogah to perform them; his salary is eight rupees a month. There is also a Jemmadar, whose salary is 8 or 10 rupees a month, and who performs similar duties (except those of writing), subject to the directions of the Darogah; and there are from 10 to 25 Constables or Burkandazes, who receive from four to five rupees a month, and who, upon a pressure of business, are sometimes deputed alone to make investigations into occurrences under the orders of the Darogah. Below all these, who are paid officers of the Government, there are the watchmen of the village, who, where the village system is complete, are kept up in a tolerable state of efficiency and organization, and sometimes perform very efficient service; but where the village system is broken down, or has long since decayed and been forgotten, as in the case of Bengal and the Lower Provinces, the village watchman sometimes is non existent, or where he exists, is scarcely paid at all; he is a mere burden upon the community, left notoriously to eke out a subsistence by connivance at all manner of crimes. It is not in the power of the Government, in the present state of the law, to enforce either the appointment or the payment of the village watchmen; it remains entirely at the option of the Zemindars and the villagers. The Magistrates, owing to the absolute necessity of the case, have insisted, and do, notwithstanding the state of the law, insist with all their influence and all their power upon keeping up the village watchmen in a tolerable state of efficiency, but they have to contend against very great difficulties; and quite recently a proposition has been introduced into the Legislative Council for a law to give the Magistrates the power of enforcing the proper appointment and adequate payment of the village watchmen, who are at the foundation of the whole police system, and without the proper organization of whom nothing in the way of an efficient police can ever be kept on foot.

3565. Lord *Monteagle* of Brandon.] The village watchmen are paid by village taxation, are not they?

By local taxation; sometimes by the Zemindars, sometimes by the villagers.

3566. Out of what funds is the ordinary police provided for?

The ordinary police is provided for by the Government directly.

3567. Are there not, in some cases, taxes specifically levied for police purposes?

In the towns, the residence of the Magistrates, there are taxes levied for the purpose of keeping up the watchmen, but not elsewhere.

3568. Earl of *Ellenborough*.] By whom would those village watchmen continue to be appointed if they were restored; would it be by the Zemindars of the villages?

According to the plan which was proposed when I left India, they were to be appointed and paid by the persons, whoever they might be, and they differed in different parts of the country, upon whom the responsibility of appointing and

paying

F. J. Halliday,
Esq.

12th April 1853.

paying them should be found properly to fall, and their appointment and payment were to be enforced when necessary by the Magistrate, he having to discover in each instance who are the responsible parties, and to insist upon their doing their duty.

3569. By whom would they be dismissed if not found to be efficient?

At present the Zemindars and villagers have the full power of appointing or dismissing them; but, under the system proposed, the Magistrate was to exercise a control and the power of insisting upon the appointment of fit persons, and the dismissal of unfit persons, but it was to be done through the Zemindars or inhabitants of the villages.

3570. The custom of appointing them having fallen into desuetude, it was a new tax, was not it?

Not quite so; in a great number of instances, even up to the present time, the watchmen have been kept up and paid, though irregularly; also in a great number of instances they are kept up by the Zemindars for revenue purposes; they are made use of as collectors of their rents, and paid for that purpose, and occasionally they obtain a precarious sort of payment in grain or clothes from time to time from the villagers themselves; it is not everywhere that they have absolutely become non-existent, though there are such cases.

3571. Where they do exist, are not they occasionally kept up for fighting purposes?

I dare say they are; it is not that class of people that we speak of when we talk of the fighting Sirdars of the Lower Provinces, though I dare say they swell those gangs sometimes; they are generally supposed to be ready, in the Lower Provinces, to turn themselves to any means of livelihood, without reference to its criminality or otherwise.

3572. In a fight for an indigo crop, they would appear, would not they, on both sides?

Very often.

3573. Do you think there could have been any concert or co-operation in a system of police, conducted in the manner you have described, with those village watchmen forming a part of it, appointed by the Zemindars?

I have said, that so long as the village watchmen continue on their present footing, any efficient system of police is unattainable in the Lower Provinces.

3574. Have not you over-stated the pay of the Burkandazes when you say it is five rupees?

Five rupees is the maximum; it is more often four rupees.

3575. Is not that the general wages of an agricultural labourer?

It is above the ordinary wages of an agricultural labourer.

3576. Lord *Elphinstone*.] Have not the village watchmen sometimes lands which they hold without payment of taxes?

Very rarely in Bengal; there is often a right to land to be traced, and, occasionally, the Magistrates have enforced and kept up this right for them. It is a right which they no doubt have had at one time, not now very remote; but the Zemindars have either changed the good land for bad, or taken it away altogether; the payment of Chokeedars by land in the Lower Provinces is now very rare; it is quite an exception.

3577. Lord *Mont-Eagle*.] Do they exist in all the Native States?

Yes, as far as I know.

3578. *Chairman*.] What is the state of the police in those districts in which the village institutions still exist?

My acquaintance with the police of those districts is now of a somewhat old date, but when I had to do with them, I found the police very much more efficient in those parts of the country than in Bengal, not only because of the greater efficiency of the village system, and, therefore, the better organization of the village watchmen, but also because the people with whom you have to deal are better altogether; much more willing to stand up for themselves and to aid the police in the prevention of crimes and the apprehension of criminals than in the Lower Provinces. In the part of the country with which I was acquainted, Bundelcund, we used, generally, upon the occurrence of ordinary offences, to

F. J. Halliday, Esq.

18th April 1853.

leave the matter entirely in the hands of the village police for some days, with merely an injunction or an admonition to find the criminal, and bring him up with proof, and they very rarely failed to effect it.

3579. Earl of *Ellenborough*.] Do you think they always brought up the right man?

I think they did.

3580. Did you ever find them out in bringing up a wrong man?

In the district of which I am now speaking, I cannot charge my memory with any precise instance; the impression left upon my mind is, that they generally brought up the right person. But that the police in various parts of India do very often bring up wrong persons, and that in this they are very often aided by the people, under colour of assisting the Magistrate, is a matter of notoriety.

3581. The Magistrate appoints the Burkandazes and the other members of the police, does not he?

Yes.

3582. What guides the Magistrate in his selection of the persons; how does he know who is a fit man to be appointed?

I think, generally speaking, the Magistrate selects for the higher offices of the police those who have served with credit in the lower offices; that is to say, he takes a good Mohurrir or Jemmadar, and makes him a Darogah. As to the Burkandazes, there are always hanging about the cutcherry of every Magistrate a great number of men hoping for employment, men who stand at the door of the cutcherry with swords and shields, and are known to be waiting for any employment of that kind that may offer. Sometimes they are taken up and employed for want of any better men; sometimes they may hold testimonials of good conduct from other persons whom they have served; but sometimes it may occur in this way: a decoity takes place, or a theft, and the Magistrate will say, "Any one who will exert himself, and bring me evidence that he has done good service in bringing the matter to light, I will give an appointment to." Very often men are appointed for good service so performed, but, generally speaking, they are taken almost by lot.

3583. Is not the Magistrate very much guided by the opinion of the people about him in the cutcherry?

Not a Magistrate who is worth anything, I think.

3584. If he has no knowledge of his own, must not he resort to some one to instruct him as to whom he should take?

It is a general instruction to all young Magistrates, perhaps a little overdone, but, on the whole, a notion on which they are brought up, that they should free themselves in all matters as much as possible from reliance upon the Native functionaries about them, and should exhibit, in the most marked and pointed manner, an entire independence of their suggestions and machinations; therefore every good Magistrate endeavours to act up to this principle to the utmost of his power. Some fail, some do not even attempt it; but, in the main, that is the endeavour of all good Magistrates, and, so far as they succeed in it, I have no doubt they succeed in establishing a good character among the Natives for efficiency as Magistrates.

3585. Nothing can be more proper than that direction; but do you think that, in the majority of cases, the Magistrate acts upon it?

It must depend, in every instance, upon the character of the man. There are some men who, whatever suggestion you may make, will fall into the hands of those about them; and there are others who, without any suggestion at all, will act for themselves; but, on the whole, the general desire is, both on the part of the superiors directing the inferiors, and the inferiors themselves, to be independent.

3586. Are you aware that, when some battalions of military police were formed in the Upper Provinces, and there was an attempt to select as many as possible from the Burkandazes, the officer appointed to the command was compelled to reject a very large proportion of them, as totally unfit for employment?

I have heard that, and I was not the least surprised to hear it; the police Burkandazes generally are a very poor race.

F. J. Halliday, Esq.

12th April 1853.

3587. Should not you say that, generally speaking, the persons hanging about the cutcherries with the object of being employed, were the worst people from whom the Magistrate could make his selection?

Very often they are; but the Magistrate is in a situation of difficulty; he has sometimes to carry matters with a high hand, and to act promptly. Cases of misconduct are constantly occurring, perhaps three or four Burkandazes must be turned out forthwith from a certain tannah, and an immediate example made. The Magistrate cannot wait to search about in the neighbouring districts for the fittest men to supply their places, but he must take those who are nearest to his hand. Besides which, in the Lower Provinces you are embarrassed by another consideration, to which I have before alluded, in reference to the gaols, that you must have in all the tannahs or police stations a certain proportion of constables who understand the language of the people. In Bengal, that is almost equivalent to saying that they will be men who are corrupt and cowardly and untrue, but you cannot do without them.

3588. Lord *Elphinstone*.] The pay is not such as to attract a very superior class of men?

I have already mentioned the lowness of the pay; I ought to add to all that I have said, that notwithstanding those great defects, it is astonishing, in the hands of energetic and clever Magistrates, how great is the effect produced, how much crime is detected and prevented, and on the whole how much of success is attained. So that it seems now to be generally understood, that bad as the material of the police is, it very much depends upon the character of the Magistrate who is over them, whether they will not produce good effects on the whole rather than bad effects.

3589. On the whole, is crime that species of crime which it would be the object of the police to prevent increasing or diminishing?

I cannot say that crime is diminishing; it is diminishing in atrocity; for instance, decoities in the Lower Provinces are as numerous as ever; in the immediate neighbourhood of Calcutta more numerous, but they are greatly diminished in cruelty and atrocity. The atrocious cruelties which used to take place in all decoities, the murders and maimings and torturings, are now almost unknown. A decoity, as it exists in the Lower Provinces of Bengal, is now merely a robbery by night with a show of violence, and scarcely ever any harm is done to the person.

3590. Earl of *Harrowby*.] Do those robberies take place in immediate proximity to Calcutta?

They take place rather more in the immediate vicinity of Calcutta than in any other part of the Lower Provinces.

3591. Do you think that arises from the greater temptation which may arise from the large amount of property in the neighbourhood of a great city, or from any peculiarity in the want of a restraining power?

The want of restraining power is common to all the districts, whatever they may be; therefore that cannot be the reason for any peculiar excess in the decoities in the districts immediately round Calcutta. I have no doubt it is attributable in some respects to the greater wealth to be found in the neighbourhood of Calcutta, and also, in a great degree, to the facility afforded to decoits by Calcutta itself, known to be a nest of decoits, and which is under a system of law and police separate and detached from the police system of the rest of the country; where, therefore, criminals, after effecting their objects in the interior, can very often retreat with a great probability of impunity. There is always much difficulty in tracing, apprehending and convicting decoits in Calcutta, although it is very well known that a great number of the decoities committed in the neighbourhood of Calcutta are committed by persons who go forth from that capital for the purpose.

3592. Earl of *Ellenborough*.] Was not it discovered, some time ago, that some decoities in the neighbourhood of Calcutta were committed by persons who belonged to a gang located in Bundelcund?

There was a very remarkable instance of a discovery of that kind, but I believe it was an exceptional case; nothing of the kind has since been traced.

F. J. Halliday, Esq.

12th April 1853.

3593. Is not the Magistrate frequently obliged to go out at the head of those Burkandazes himself, and to expose his person to danger?

Not frequently; he has sometimes.

3594. There is no moment in India in which a Magistrate may not have to go out and to expose his person in the field?

No.

3595. Would not it be desirable for him to have some persons who would be likely to stand by him in a case of that sort?

Yes. I have in my mind one case, which I dare say is one out of many, where a Magistrate went out with his police not long ago, and was beaten back, his police Darogah killed before his eyes, and he himself escaped only, I believe, by the fleetness of his horse, the police giving way in all directions, and giving him no sort of assistance. That will generally be the case whenever a Magistrate goes out with the police of the country.

3596. Are you aware that when the military police was established in Bundelcund and Saugor, the number of the police was so much diminished, that, notwithstanding the increase of the pay, the total expense was not very much greater than the police which was put an end to?

I have heard the fact, but I am not aware of it, except at second-hand.

3597. Since the establishment of that police in Saugor, which was established almost immediately after the suppression of an insurrection, has there been any insurrectionary movement, or any sort of disturbance in that district?

Not that I am aware of; but my evidence upon that subject is not worthy of any particular attention.

3598. In fact, you have not known anything of the kind since the establishment of that police, and the alterations made in Saugor?

I am not aware of it.

3599. Lord *Wharncliffe*.] The police system being so inefficient in the Lower Provinces, have you ever turned your attention at all to the means of improving it, and can you suggest any means by which it might be made more effective?

The great thing is to pay them better, so that you may have better instruments; when you have done that with the material of the police as it now exists, you will, I think, be in a fair way towards improvement. Besides that, I should be glad to see available in different parts of the country, over and above the ordinary police, a police not so much for the purpose of the detection of criminals, for which they would be in a great measure unfit, but fitted to cope with armed bodies on such occasions as I have alluded to, when a Magistrate is obliged to expose himself, and when something like courage and resolution are required on the part of the subordinates of the police. I should, myself, not be unwilling, with great care and circumspection, from time to time, to endeavour, for I can say no more, to resort to the employment of the Zemindars themselves in aid of the police. I think it might be made gradually the means of distinguishing them, and bringing them forward in the public service, making them useful in their neighbourhoods, and giving them a lawful degree of power which they now often generally exercise unlawfully, and against the Magistrate rather than for him.

3600. Earl of *Ellenborough*.] Would not it generally be exceedingly advantageous to endeavour to bring the landed proprietors of the country, the ancient gentry which remain, into co-operation with the Government?

In every possible way; I would even run a little risk to effect it.

3601. Lord *Wharncliffe*.] In what way would you propose to bring them to the assistance of the Government?

I should make it known that the Government were empowered and prepared to dignify any Zemindar who had shown himself worthy of the distinction, with the power, more or less, of a Magistrate, within certain limits, and I would call upon him, by means of his own people, to assist in putting down crime and handing up criminals to punishment; and further, I would, in such peculiar cases—for they must always be selected with very great discrimination, and at first very rarely—give the Zemindar so selected a power, which in Bengal almost every Zemindar actually exercises at this moment, of deciding petty disputes among his

his own ryots within his own Zemindary. It has always appeared to me that we have overlooked a valuable means of assisting the administration of justice in petty matters by discouraging, and even in some cases punishing, at all events always ignoring the existence of this kind of authority on the part of the Zemindars, and yet it is a matter of absolute notoriety that there is scarcely a single Zemindar of any power and influence in Bengal but holds either himself, or through his head manager, a regular court for the administration of justice in petty cases amongst his own tenants, who resort to him very willingly, and submit to his decisions. I think it would be well, at all events wherever the character of the Zemindars was such as to justify it, to legalize this exercise of power, since you cannot prevent the power being exercised unlawfully.

3602. Earl of *Harrowby.*] Would not that involve the necessity of putting it down where it was improperly exercised?

I think it would, and you might then put it down with some sort of effect, giving it as a distinction to Zemindars who had shown themselves to deserve it.

3603. Do you think you could put it down in such cases?

You might more plainly discourage it; you do not now know what to do; your Magistrates are aware that the exercise of this unlawful power on the part of the Zemindars is very useful, and yet they will never acknowledge it, and the ryots sometimes make use of it as a means of annoying and harassing their own Zemindars; occasionally a complaint will be brought against a Zemindar that he has exercised this power, which every one knows he has been exercising for years.

3604. Would you allow an appeal from such a decision of a Zemindar?

In the cases I have supposed, I should not dream of such a thing as an appeal; I should give considerable power to the Magistrate to interfere and set things right upon further investigation, where he thought there was a strong necessity for it.

3605. Lord *Monteagle* of Brandon.] Might not it be practicable to allow an appeal in case there was an excess of the authority that was given to the Zemindar, without allowing an appeal upon the merits of the case as decided by him within that authority?

In some form or other, but not a very accurate or exact form; I would enable the Magistrate always to superintend this system, and to interfere where he saw there was a probability of abuse.

3606. Earl of *Ellenborough.*] Would not the most efficient means of inducing the co-operation of the Zemindars, and generally of the landed proprietors and the gentry of the country, be to show courtesy and great consideration towards them in all personal communications with them?

Undoubtedly; no man who has had anything to do with them in the interior but knows that that is almost the only way.

3607. Are not the Natives of India of the higher rank especially sensitive upon that point?

Yes.

3608. Earl of *Harrowby.*] Are not they habitually so treated?

I think they are; it is considered a great breach of duty in any man who does not so treat them; any officer of the Government who behaved otherwise would incur the displeasure of the Government.

3609. Lord *Monteagle* of Brandon.] In respect to the mode in which the police themselves treat the Natives of Bengal, is that in your judgment satisfactory?

Not at all.

3610. You have already stated that in many cases they are not efficient for the prevention of crime; what is your opinion of the police, as regards their conduct towards the Natives?

They are oppressive and extortionate.

3611. Have you known any instances in which personal violence, going almost to the length of the infliction of torture, has taken place?

I have known such cases, and have heard well-grounded suspicions of many more.

3612. If there be a distinction between the action of the police in other parts of India and in Bengal, is the conduct of the police better or worse in proportion as there is a power of resistance from the personal character of the Natives?

Undoubtedly the police in the Upper Provinces do not oppress the Natives under them to the same extent that they do in the Lower Provinces, and I have no doubt that it is for that reason.

3613. Lord *Colville* of Culross.] Are the cases decided by the Zemindars illegally, as you say, solely cases relating to property, or do they include petty offences as well?

Petty offences and quarrels between their tenants.

3614. *Chairman.*] Are there any instances in which Magistrates have been strongly censured by the Government for want of courtesy to the Natives?

I scarcely remember any particular instance; it would be considered on the part of the Government as against a man's character, if it were known that he was habitually uncourteous to the Natives; any instance of oppression or unnecessary severity is very strictly dealt with.

3615. Earl of *Harrowby.*] Is it impressed upon young men when they arrive in Calcutta, that it is one of their first duties to behave not only with justice but with courtesy to the gentry of the country?

There are no particular means taken on the part of the Government to impress them with that view, but it is the general feeling of the officers of the service.

3616. Is that the general tone of the young men when they arrive?

It is not the tone of the young men when they arrive, quite the contrary.

3617. Earl of *Ellenborough.*] Did you ever happen to have seen a letter addressed by Warren Hastings to an old friend of his at Benares, not long before he died?

I do not recollect it.

3618. You do not recollect ever to have heard the manner and the tone in which he used to address the people he employed, by which he obtained so much personal influence over them?

I cannot at this moment recollect any case of the sort.

3619. *Chairman.*] You have spoken of abuses in the administration of justice and abuses in the police; do you consider that the present generation are altogether answerable for their having arisen?

No; I think the present generation are very little answerable for them. The system was established by men who undoubtedly thought that the nearer they could approximate to the English system the better it would be; and it is by too great an approximation to the English systems that failure has been in a great many instances ensured. I think for some years past it has been clearly perceived that that was an error, and now people rather endeavour to build upon what is good in the Native systems, than to supplant them by novelties introduced from Europe.

3620. We are now living in the nineteenth century; should you say that the capacity of the bulk of our Indian dominions for the acceptance of civilized Government exceeds that which existed with us in the eleventh or twelfth century of our own history?

I would say, certainly, you must go some centuries back in England before you would arrive at anything resembling the state of civilization now generally prevalent in India; and that any attempt to build up a state of things in India, upon the supposition that the civilization there will bear what the civilization here would support, would be a mistake, and must end in failure.

3621. Earl of *Ellenborough.*] Do not you think it is more difficult to govern India now, through the Natives in the present state of society and property in that country, than it must have been in the time of Aurungzeb?

I am not aware, speaking of the unsophisticated parts of India, that there would be any greater difficulty, except so far as the people of our territories have

F. J. Halliday, Esq.

12th April 1853.

been used to a much more exact administration of justice, and in some degree to more rule and system, and, therefore, would not bear now anything quite so loose and irregular as we may suppose to have existed then.

3622. Have we the same instruments now which must have existed in the time of Aurungzeb; is not the state of property so entirely altered as to have destroyed a very large number of gentlemen of considerable possessions throughout the country?

No doubt. That question, however, must be very differently answered, as it relates to different parts of India; perhaps the village system in many parts of India may be the same now as it was in the days of Aurungzeb, and, therefore, there may be the same class of people existing as instruments through whom to carry on your administration.

3623. The Court of Aurungzeb was composed of noblemen of high rank, with men of very great possessions. In all the Courts of the Emperors men were employed of the highest rank and the greatest wealth in the country?

As far as I know anything of the circumstances of that time, the persons about the Courts then were much the same sort of persons that we found among the Native Courts when we began to deal with them; persons who have risen from nothing by the strong hand and the strong head, or who were the immediate descendants of those who had so risen. There is very little of old hereditary rank about Native Courts in India, and there very seldom has been.

3624. Earl of *Harrowby.*] Are Natives at all employed in the internal administration of affairs in Calcutta?

A little: there is a Native Magistrate upon the Bench, and there is a Native Judge of the Small Cause Court. Natives are also employed upon the Council of Education, which has the administration of affairs relating to education in Calcutta and the neighbourhood. I am not aware of anything else.

3625. There is no Municipal Government in which they have a share in Calcutta, is there?

There is an attempt at Municipal Government, in which the Natives have a share: it cannot be spoken of by any means as successful; it is quite a recent introduction.

3626. Lord *Mont-Eagle.*] There is no such thing as an unpaid magistracy, is there?

No.

3627. Earl of *Ellenborough.*] Has not it been the tendency of the resumption of rent-free tenures to destroy a great many of the remaining ancient gentlemen of the country?

It has been said that it will have that tendency; it has not necessarily destroyed them, because the resumption has not taken away the whole of their property; it has only subjected their property to taxation, which before was tax-free; and if the taxation is excessive, of course it will have a depressing effect; but during the later years of the administration of the resumption system, every possible endeavour was made to prevent its having that effect, and the taxation was laid on with a very light hand, and the resumption let down as far as possible, so as to obviate what, it was apprehended, had been or might be the bad effects of too great a pressing of that measure.

3628. Lord *Elphinstone.*] The resumptions were only applied in the case where the sunnuds were not forthcoming, were they?

Where they were not forthcoming, or where they were fraudulent; they were either invalid in consequence of being dated subsequently to the time when those who professed to grant them had legal authority to give such grants, or because they were not forthcoming at all; or, in many instances, because the deeds which were forthcoming were proved to be forgeries; but it is not the less true that there were people who had held under doubtful or actually invalid titles for a great while, they and their fathers before them, who suffered owing to the resumption system, in a manner which created great commiseration among their countrymen, and which I think was more than the Government really intended at the time the resumption measures were first put into operation.

3629. Was there no limit to the period to which the resumptions could be carried back?

Yes, there was a very strict limit.

F. J. Halliday,
Esq.

12th April 1853.

3630. What was that limit?

The limit differed in different provinces; in Bengal it was the 12th of August 1765, what is called the date of the Dewanny; in the other provinces some period corresponding with it.

3631. Lord *Monteagle* of Brandon.] Upon that date, which was all-important, was not the decision of the Privy Council contrary to the decision which had been pronounced in India, and did not it affirm as good titles in the hands of the Natives, titles which, under the Indian decision, would have been set aside?

It is impossible to answer the question so generally. The case does not bear being put in such a general form; it makes a specific decision, applicable, as it were, to the whole class of resumptions.

3632. With respect to the specific case which was appealed, was not the question at issue, the period of limitation which constituted a good title, and was not the decision of the Privy Council a decision reversing the decision of the Courts in India?

The decision of the Privy Council in the specific case to which I desire to limit it in my answer, overruled the decision of the Court below, and was to the effect, that the lapse of time previous to the claim being made by the Government was sufficient to bar the claim of the Government. The Court below had decided in that particular instance, that for reasons applicable only to that particular case, the lapse of time did not bar the claim of the Government. It is very desirable (in consequence of what is actually going on, now arising out of that decision) for me to say, nothing which should lead anybody to suppose that that case was capable of being immediately generalized and applied to all existing resumptions whatever, which has been erroneously supposed by some of the Natives, and has led to confusion and misapprehension, and to some anticipations which must almost inevitably be disappointed.

3633. It clearly must be a question for the Courts to determine?

In each case.

3634. In that special case, the effect was to give to the party a title by possession under the decision of the Privy Council, which title by possession had been refused by the decision of the Court below?

The decision of the Privy Council gave effect to a plea in bar of the claim of the Government which had not been pleaded in the Court below. It is impossible to say what might have been the effect of its having been pleaded in the Court below; it was not pleaded there; it was afterwards pleaded before the Privy Council. The Privy Council took up the plea which had not been made in the Court below, and decided against the decision of the Court below, giving back the resumption to the appellant.

3635. Lord *Broughton.*] The whole case had not been heard, in fact?

No.

3636. Lord *Elphinstone.*] Can a resumption, in any case, take place where the estate was in the possession of the family before the year 1765?

No.

3637. Earl of *Ellenborough.*] The year 1765 is not a date referring to any Act in the North-Western Provinces?

No; that is a much later date; it is a corresponding date, having a similar relation to the date of our possession of the country.

3638. Lord *Elphinstone.*] In no part of India can an estate be resumed which was in the possession of the family now holding it prior to 1765?

No estate that can be proved to have been in undisputed possession, rent free, before the 12th of August 1765, can be resumed.

3639. *Chairman.*] Do you think it fair to compare the administration of justice in India with the administration of justice in England, rather than with that which exists in the Native States?

I cannot say that I think it at all fair; the way to look at the administration of justice in India under our Government is to compare it with anything that the Natives had, or could expect, under the best system of Native Government before our rule; if we give them anything better than that, we have done something

thing for them worthy of commendation; but to compare it with the more perfect systems of Europe must, in my judgment, necessarily be a mistake.

3640. Earl of *Ellenborough.*] Do you apprehend our administration anywhere to be as good as that of Ahalya Bau?

The administration of Ahalya Bau was stated to have been exceedingly good; probably no administration of ours ever gave more satisfaction to the Natives than that administration.

3641. Do you think that our administration is better than that of Putteala?

I am not conversant with the administration of Putteala; but again I would say, that it is not quite fair to compare the administration of an immense territory by our Government with the administration of a petty principality, which is like an estate.

3642. The Collector in our system stands in the place of the Rajah of that State?

Yes.

3643. Did you ever happen to become acquainted with the Rajahs of Ulwar and Bhurtpore?

Never.

3644. Are you aware of the system of administration in either of those two principalities?

No; I have no means of knowing.

3645. Lord *Monteagle* of Brandon.] Do you consider that a strict adherence in the judicial system of India to a principle of promotion by seniority, is consistent with the good administration of that judicial system?

No, certainly not.

3646. You are aware that it is contrary to the English principle of judicial appointment; do you consider that it would be expedient to depart from it with respect to judicial appointments in India?

Wherever the evidence of superior merit is marked, there the principle of seniority should be departed from; but I would say, that the principle of seniority in the administration of the Government of India is of use in preventing jobbing; you have by no means always in such an administration, with no public, any clear means of knowing what are the relative merits of the individual servants of the Government, except in cases of very strongly-marked success or failure, which, of course, are exceptions; and if you were, in all matters, to insist upon promotion being solely by merit, without any reference to seniority, you might open the door sometimes to a great deal of caprice, and sometimes to a little jobbery.

3647. The question which I put to you specially applied to the Judicial Service; do not you think, independently of the applicability of the principle of selection for merit to other branches of the service, the peculiarity of the Judicial Service is such as, under just limits, and with due precautions, to make the choice of the best men necessary in all judicial appointments?

Undoubtedly.

3648. Earl of *Ellenborough.*] Do not you think that considerable advantage would be derived in the Lower Provinces from tours to be made by the Governor, so that he might see things with his own eyes?

Very great advantage.

3649. How long is it since the Governor has made a tour through those provinces?

Lord Dalhousie has just returned from a short tour, the only one which has been made for many years; the only one as far as I know that was ever made.

3650. How far did he go?

I do not know how far he went; he went to the eastern districts; he had In had it in view to make such tours, and to make them frequently, at all events one every year; but he was only able to carry them out to a small extent, and I believe has only visited a few of the districts in the neighbourhood of Arracan and Chittagong. It was his intention to visit the whole of the eastern districts, and then afterwards the rest.

F. J. Halliday, Esq.

11th April 1853.

3651. Earl of *Harrowby.*] The Governor-general cannot very well spare the time for such visits of inspection?

It is almost impossible.

3652. Lord *Elphinstone.*] Are not the districts in the Native States frequently farmed?

I am not aware from personal knowledge.

3653. Lord *Monteagle of Brandon.*] One of the objects which were stated as being sought to be accomplished by the last Charter Act, was the promotion of the settlement of English disconnected from the Company in India; is there much of that settlement going on now?

No, there is not; on the whole, the resort of Englishmen to India has increased, but not so much as was anticipated, and they have chiefly congregated in the Presidency towns.

3654. Do you trace that in any respect to the uncertain state of the law which exists in the Mofussil?

I do not think that has had anything to do with it.

3655. What law would an Englishman have in the Mofussil, if he were to settle there?

In civil matters he would have the same law that would be administered to a Native; in criminal matters he would be entirely subject to the law of England, under the administration of the Supreme Court.

3656. You are aware that among the labourers of the Law Commission, there was an Act which they passed under the name of the Lex Loci; was not that intended to have put an end to the anomalous state of the law in the interior, which you have described?

I am not aware that the Lex Loci was specially intended to be of use to Englishmen, but it was intended to put an end to the very anomalous state of the law as regards all persons excepting Hindoos and Mahomedans, who have at present actually no law.

3657. That was recommended by the Government of India to the Home authorities, was not it?

It was recommended to the Government of India. I am not certain what was then done with it; it was one of many propositions of the Law Commission which remain suspended. Nothing was actually done upon it.

3658. Earl of *Ellenborough.*] Do you not think it would be a very convenient thing to give India, at once, or as soon as possible, a code once for all, and then to have done with it, and not to go on year after year making some little alteration in law here, and another little alteration there, to the great disquiet of the Native mind?

Indeed, I think not; I think we know too little of India and its wants, and our administration is too much in a state of experiment to make any such code. If it were practicable it might be very useful, but the fact is, from year to year we are constantly finding something that requires to be amended.

3659. You would have no Macaulay Code or Bethune Code?

I see no objection to the Macaulay or Bethune Code, because they relate to a subject capable of codification: a penal code is a thing in which no great alteration can take place from time to time; but in matters of civil right and procedure, we know too little to trust to any code, and if you were now to make a code, I am sure it would require constant alteration from time to time.

3660. Lord *Wharncliffe.*] Do you think it desirable to introduce into India the criminal code, as it has been lately remodelled?

I see no objection to it generally; I do not wish to give any opinion upon its details, because it is in the hands of a man who is very competent to give a trustworthy opinion.

3661. Lord *Mont-Eagle.*] After how many years' experience of the Government of India do you think we shall obtain knowledge enough to legislate for that country?

I have no great faith myself in codification; I should expect that it would be long before we could codify the laws of India in that manner.

3662. Lord

Lord *Monteagle* of Brandon.] Have you the means of expressing an opinion whether the enactment of the Elphinstone Code at Bombay has been productive of good or evil?

It is generally said by all Bombay officers, that it was productive of very great good; I have never heard that disputed by any person familiar with the code; it was also said by the Law Commission, that as far as it went, it was very valuable and very useful, but that it required a great deal of amendment.

3663. Earl of *Ellenborough.*] When you proposed the extension of the Legislative Council, did you intend to transfer to that Legislative Council the whole powers of legislation, not leaving to the Executive Council, which now has the power of legislation, the means of meeting any great emergency by an ordinance which should have the effect of law?

I had not very particularly considered the matter; but the Legislative Council, as I have supposed it, could be put into immediate action for the purpose of passing any such ordinance; perhaps political emergencies might arise that would require some greater powers; I have no desire whatever to limit them in such cases; whatever of that sort is necessary should be given: I only meant that the Legislative Council should be constructed, as I proposed, for general purposes of legislation. I had not any peculiar exception in my thoughts at the time.

3664. As regards their power of passing an ordinance to meet an emergency, there might be a provision that there should be a power of absolutely repealing it here without reference back to India; might not there, so that it could only last for three months?

Yes; and the Governor-general would always have an absolute veto upon their proceedings.

3665. Lord *Monteagle* of Brandon.] There would be no objection, according to the scheme which you explained to the Committee for the Improvement of the Legislative Council, to their passing, instantly upon the spot, any law that was recommended to them, and of which they approved, and giving it instant effect?

None.

3666. Lord *Wynford.*] Pass whatever code you may, either the Macaulay Code or the Bethune Code it will never ensure the permanent settlement of Europeans in India, will it?

I do not think the code has had anything to do with the settlement of Europeans in India.

3667. Lord *Monteagle* of Brandon.] The question referred simply to the fact of whether the code would or not relieve Europeans wishing to settle in India from any disadvantage to which they are subject by the confusion of law which you have described; would not the code have tended in that way to facilitate European settlement?

The truth of the matter is, that the passing of the code would be a great disadvantage to Europeans; at present they have almost complete impunity.

3668. Do you think that it is advantageous to any class of any community, at any time or in any place, to possess complete impunity?

I think they look upon it as an advantage.

3669. Lord *Mont-Eagle.*] Do you think the Government of India has wished to encourage the settlement of Englishmen in India?

The Government of India has shown no direct desire to encourage it; on the other hand, it has shown no desire whatever to discourage it.

3670. Earl of *Harrowby.*] The settlement of Europeans in India depends entirely upon other considerations, you think?

Entirely; it depends chiefly, I should say, upon the means of profitable employment in India.

3671. No one will settle in India except with the view of making a fortune?

Making a fortune and returning.

3672. Lord *Elphinstone.*] After the crisis of 1847, many Europeans who were employed in the Mofussil came away, did not they?

I think, after that, there were considerably fewer Europeans employed in the Mofussil than before; I do not know what became of them.

F. J. Halliday, Esq.

12th April 1853.

3673. Earl of *Ellenborough.*] In point of fact, the indigo plantations are carried on very much by means of money borrowed from houses in Calcutta, are not they?

Yes, entirely.

3674. *Chairman.*] What means are taken for the promulgation of new laws?

Before a law is passed at all, a draft is published in the Gazette, and translations of it in various languages in the different Gazettes of the Presidency. This invites public attention, and very often causes a number of suggestions to be made regarding the proposed law. Afterwards, as soon as the law is passed, which is not done till repeated publications have been made of it in English and in other languages, the law itself as passed is published in the Gazette, and translations in the different languages are made and published in the Native Gazettes for the information of the Natives concerned; those are very largely circulated by means of the Courts and Cutcherries of the different officers of the interior; so that there is no want of knowledge generally of laws which are passed.

3675. Lord *Wharncliffe.*] So far from any representations with respect to it being discouraged, are not they rather sought?

They are.

3676. Earl of *Harrowby.*] In what way are those representations expressed; through the public journals, or by means of memorials to the Government?

Sometimes by memorials; sometimes by addresses from certain individuals; very often indeed by correspondence in the papers both Native and English, and occasionally by public meetings.

3677. Lord *Monteagle* of Brandon.] You remember the passing of that portion of the Lex Loci which is called the Liberty of Conscience Law?

Yes.

3678. In that instance were not there representations from the Presidencies of Madras and Bombay with respect to it?

There were representations from Madras and from Calcutta; I do not think there were any from Bombay.

3679. Were not replies given by the Government and by the Law Commission to those representations intimating that they had been taken into consideration?

The first remonstrance came from Madras; it was very carefully replied to by the Government under the signature of the Secretary. The second remonstrance, which was of precisely the same nature, came from Calcutta, and it was replied to by a copy of the letter already sent to Madras. The third remonstrance came long afterwards from Calcutta, when circumstances had a good deal changed, and in the judgment of the Government it embodied nothing really new, and nothing requiring any further and specific answer; and as the Government does not undertake to answer all such remonstrances, no answer was sent to that, and no answer could have been sent which would not have been merely a repetition of what had been given already.

3680. Was there every reason to imagine that the previous answer was known to the parties who were the subsequent applicants?

No doubt whatever; it was perfectly well known.

3681. That law has been very much complained of, and its enactment has been put forward as being inconsistent with some pledge implied or actual between the authorities of the Company and the Natives of India; what is your opinion upon that subject?

No such pledge exists or can be pointed to, express or implied; the Government has always been in the habit of legislating for the prevention of such parts of the customs or even laws of their Native subjects as it conceived to be contrary to justice and humanity. This was merely a continuation of the same class of legislation.

3682. Earl of *Ellenborough.*] Before the Suttees were put down, it had been ascertained, had not it, that there was no authority for them in the Hindoo law?

It was ascertained that there was no authority, according to the best and most authentic treatises extant; but it was not the less ascertained that it was a custom in the minds of the Natives, having the full force of a religious injunction, and that

F. J. Halliday, Esq.

12th April 1853.

that the mere fact of its not being traceable in the older religious books was by no means against its being held in that day as a most potent religious obligation.

3683. Lord *Monteagle* of Brandon.] In the case of the regulation with respect to the right of conscience, Act 21 of 1850, was not the Government aware that a precisely similar law had been in force in Bengal for 18 years antecedently, which had been uncomplained of by the Natives themselves?
It was so.

3684. Lord *Elphinstone.*] Under the Mahomedan Government, a Hindoo becoming a Mahomedan, did not forfeit his paternal inheritance, did he?
So far as the Hindoos themselves could at any time enforce their own law under the Mahomedan Government, he would be considered to come under such forfeiture as could be put into effect; but if the Hindoo law in those days was a dead letter, which I imagine it was, as far as any enforcement of it in any regular Court went, of course forfeiture could not be enforced.

3685. Do you suppose that Aurungzeb would have decreed that a Hindoo had forfeited his estate by becoming a Mussulman?
I believe not.

3686. Earl of *Ellenborough.*] Have there been cases at Calcutta of a married person becoming a Christian, and of the person not becoming a Christian, refusing to live with the new convert, but being forced to live with him by the Court?
There have been such cases, but I cannot say at this moment how they terminated; they have always created a good deal of embarrassment; there have been cases where the husband has been converted, and his wife has refused to live with him. I also know of cases where the wife has been made over to the husband by the assistance of the Courts. I am not aware of any instance the other way, but I know one or two instances of the husband having become converted, and having obtained the society of his wife through the means of the Courts.

3687. At Calcutta?
Not in Calcutta itself, but in the immediate neighbourhood.

3688. Have the decisions of the Courts at the different Presidencies always been uniform upon that subject?
No; whenever it has been done, it has been done through the Magistrate; the husband has applied to the Magistrate to assist him in getting back his wife, who has, as he states, been taken away from him by force; he proves the fact, and the Magistrate gives him assistance to get his wife out of confinement in the house where she is stated to be confined by her friends; she is brought up, and it is shown that she is his wife. In the instances I have in my mind, there was no disinclination on the part of the wife to return to her husband, and she was therefore made over to him. But I have heard of embarrassing cases, where the wife has shown a strong disinclination to return, and where the Magistrates, acting upon their own discretion, without any precise guidance of the law, have been very much puzzled to know what to do; and I dare say in different parts of the country they have followed a different course.

3689. There have been cases of the kind in the Supreme Courts, have not there?
I do not remember any case in the Supreme Court of Calcutta. There was a case in the Supreme Court of Madras, which created a great deal of conversation.

3690. What was the decision in that case?
I think the wife was obliged to return to her husband.

3691. *Chairman.*] You stated that all new laws were published in the Native Gazettes; what Native Gazettes are there in the Mofussil?
The Government publishes in Calcutta a Gazette in English, and a Gazette in Bengalee, and till the other day it published a Gazette in Persian. At Agra a Gazette is published in English and in Hindostanee; at the Presidencies of Madras and Bombay I think the two are combined.

3692. Those are Government Gazettes?
Yes, Government Gazettes. The announcements are all made in the Native languages.

F. J. Halliday, Esq.

12th April 1853.

3693. Are those Gazettes published in all the leading Native languages?

Yes, in all the leading Native languages. They contain a great deal besides the laws; they contain all appointments, English and Native; they contain the General Orders and Rules of the Courts or of the Boards, and all things which it is necessary for the Native officers of the Government generally to know, and which it is more convenient to inform them of in that way than by sending them separate instructions.

3694. Do you apprehend any danger from the Native Press?

The Native Press is a very curious problem. I cannot say that I apprehend any danger from it, but I have by me some specimens of the productions of the Native Press which I should be glad to lay before the Committee; they discuss the measures of the Government with remarkable freedom, and even scurrility. The existence of the articles published in them is by no means sufficiently known or observed, and they receive no sort of answer or contradiction. It is a question to be considered, whether that state of things is sound, and whether now, or at any future time, a time of war for instance, any and what means should be adopted for meeting it. I believe that any attempt to put it down by absolute prohibition or censorship would be out of the question.

3695. Lord *Mont-Eagle.*] The Native newspapers have no circulation out of the Presidencies, have they?

They have a very small circulation; that is the reason why the Government, I suppose, thinks little of what is published in them.

3696. Earl of *Harrowby.*] Do you imagine that the Native public of Calcutta acts much upon the public mind of the Mofussil?

No, I do not; except in the immediate vicinity of Calcutta, and beyond Bengal, it has no influence, but the contrary; the public opinion of Calcutta represents very little, except the opinion of a few busy, stirring men of Calcutta itself.

3697. Is the Native population of Calcutta composed at all of occasional residents from the country?

It is.

3698. Coming up, as in the capital cities of Europe, to engage in the business or enjoy the pleasures of the capital?

Very little in the way of pleasure, but coming up on account of business and on account of pilgrimage. Calcutta is a place of pilgrimage.

3699. The habitual residents of Calcutta have not much connexion with or influence over the Mofussil?

No, very little, excepting in the case of wealthy Natives residing in Calcutta, who have large estates in the interior, which is a common thing.

3700. Are there rich Natives living in Calcutta who have estates in the interior?

Yes; and many of them never go near them.

3701. Earl of *Ellenborough.*] Which estates they have bought at the sales for non-payment of revenue?

Or they may have been left to them. Sometimes they are the result of successful commerce.

3702. Earl of *Harrowby.*] If any distinctions were conferred upon Natives living in Calcutta, do you conceive that it would be considered as a compliment to the Native population generally?

I think the Natives are well contented to see their countrymen distinguished, but they care less about it than might be supposed; and, as I said before, the influence of the people in Calcutta is very slight beyond Calcutta.

3703. Lord *Wharncliffe.*] Was not there a remarkable instance of a Native, appointed by Lord Dalhousie, whose appointment gave dissatisfaction?

Yes; it gave dissatisfaction to rival Natives in Calcutta.

3704. Earl of *Ellenborough.*] Would not the opinion of the people of Benares have much more influence in India than that of the population of Calcutta?

Incomparably more.

3705. Earl of *Harrowby.*] Are there resident in the other great towns of India men of considerable local influence in the country?

In some of the towns undoubtedly.

3706. Exercising considerable control and influence over the country?

Yes; that is the case with Benares; I have no doubt the population of Benares exercises very considerable influence over the whole of India.

3707. Earl of *Ellenborough.*] That arises from religion, does not it?

Yes.

3708. Lord *Wharncliffe.*] Should you consider that, in the case which was just now alluded to, the indication of jealousy on the part of the Native population was caused by any one of their countrymen being raised above the ordinary level, or did it apply to the particular individual who was raised in that instance?

I think there is a petty jealousy in the Native Bengalee mind in regard to all persons who obtain any elevation of the kind, and it displayed itself in this particular instance, taking the form of personal obloquy and abuse of the person promoted.

3709. Lord *Monteagle* of Brandon.] Was not there an instance of a Native employed in the Courts of Law in a high office, and who is still living; is not that man one who exercises very considerable influence over the Natives of Calcutta?

Very great influence.

3710. It was not diminished by reason of his having that official employment?

Most likely it was considerably increased.

3711. Lord *Wharncliffe.*] Do you think the jealous feeling exhibited upon the occasion referred to, in a previous question, would be likely to arise in case of the appointment of Natives to the Sudder Bench or to high offices in the Government?

The elevation of one man over his fellows is always apt to occasion more or less envy and jealousy, and, among such a petty-minded people as the Bengalese, it has that effect more perhaps than anywhere else, and it shows itself more distinctly; but, except as a particular indication of what generally passes in the human mind upon such occasions, I am not aware that I should attach any importance to it.

3712. Would not that circumstance rather show that such appointments would not have the effect of conciliating the Native mind?

To that extent it certainly would; but such appointments as I have recommended I have not recommended with a view of conciliating the Native mind generally, but with the view of giving encouragement and exciting emulation among those persons in the subordinate ranks who might hope to attain to the same promotion hereafter.

3713. Lord *Monteagle* of Brandon.] Do you think that the appointment of Natives as Principal Sudder Amins, which is an introduction of late years, created discontent among the Natives, or had it an opposite tendency?

I think the Natives, on the whole, were pleased with it.

3714. Earl of *Harrowby.*] Do any of the mediatized Princes of India come forward in a public manner, or do they live apart in their several districts?

I know too little of them to be able to answer the question.

3715. Lord *Elphinstone.*] You said just now, that the Native Press had very little circulation out of Calcutta. You said before that you thought there would be great difficulty in dealing with it if it were found dangerous; how would there be any difficulty in dealing with it if its circulation is so limited?

I referred to the difficulty of determining how to act; whether to attempt to put it down by a strong hand, or to act by means of the existing laws, in the way of prosecutions, or to meet it by corresponding publications of a better kind, in which the scurrilous abuse of the Government or the Government measures should be properly answered, and the measures of the Government properly explained to the Natives. What I meant by a difficulty was, that there was a difficulty in the choice of means to meet the particular evil.

3716. Lord *Monteagle* of Brandon.] You are aware of the cases in which the late Mr. Charles Wynne, when he was President of the Board of Control,

F. J. Halliday, Esq.

12th April 1853.

administered his patronage, by bestowing the appointments in his gift as prizes in some of our great establishments of education?

I have heard he did so.

3717. Are you acquainted with any of the Civil servants who went into the service of India under such appointments?

If any of them were named to me, I could say whether I knew them or not.

3718. Mr. Torrens and Sir Henry Elliott?

Both of them were very fortunate selections, no doubt, especially the latter

3719. Do you consider that, in dealing with Indian patronage, that system might be adopted and extended?

I should be very glad to see something like it adopted as an improvement; something that would prevent what now happens, men creeping into the service who are clogs upon it, and are unfit for anything; not that that occurs in the majority of instances, but it ought not to occur at all.

3720. In the returns which are before the Committee, it appears that the employment of the Natives has, since the date of the last Charter Act, very considerably increased, both in point of numbers, and the responsibility of the positions which they are called on to occupy. Take, for instance, the case of the Principal Sudder Amins, or the Deputy Magistrates; were those appointments to offices which antecedently existed according to the Indian Regulations, or were those offices created at that time for the purpose of the employment of the Natives?

The office of Principal Sudder Amin was created at that time, during the Government of Lord William Bentinck, for the express purpose of bringing forward the Natives into the higher offices in the administration of justice; so with the office of Deputy Magistrate and of Deputy Collector.

3721. Earl of *Ellenborough*.] The Deputy Magistrates are not all of them Natives, are they?

They are not so much as they ought to be. It was a mistake in the earlier appointments to those offices, that so few Natives were appointed, and that the offices were given so much to Europeans and *quasi* Europeans. All those opportunities should be taken of bringing forward Natives in the administration of their own country, and the offices should rarely be given to Europeans.

3722. You were Secretary to the Government of Bengal when the measure was introduced, were not you?

Yes.

3723. How many were appointed in the first instance?

Twelve.

3724. The authorities here reduced the intended salary, did not they?

They reduced the intended salary.

3725. Did not that materially impede the making of a good selection?

It did; it created great disappointment, and impeded the operation of the measure very much.

3726. Lord *Wharncliffe*.] To what extent was the salary reduced?

It was not a very great reduction; but the fact of a disposition to reduce the emolument in itself created great disappointment in India.

3727. Lord *Monteagle* of Brandon.] Under certain circumstances, the Deputy Magistrate exercises all the functions of a Magistrate, does not he?

He may do so, according to the power entrusted to him; he may exercise all the power, or any amount of power, which the Magistrate may think fit to confide to him.

3728. According to your experience, have you been satisfied, on the whole, with the mode in which they have exercised those powers?

Very much so.

3729. Does the same observation apply to the Deputy Collectors?

Quite so; but the Deputy Collectors were not, in the first instance, selected with sufficient care, and some of them failed in consequence. They were also appointed

appointed in too great numbers; so that it was almost impossible to get so many men well qualified.

3730. Lord *Elphinstone.*] The office of Deputy Collector is one which requires a much greater exercise of discretion than the office of Suddur Amin, is it not?
Yes; but he is more under the control of his immediate superior; he has not such large independent powers as the Principal Sudder Amin; the Principal Sudder Amin has a very large independent jurisdiction.

3731. He must always act under strict law and regulation?
Yes; whereas the Deputy Collector has considerable discretion in some cases.

3732. Earl of *Ellenborough.*] If the Governor of Bengal, or the Secretary of Bengal, were very carefully to weigh the respective merits of all persons, Native and European, whom he promotes, what period of each day would be occupied in that operation?
It does, indeed, at this moment, take a great deal of time.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next,
Two o'clock.

Die Jovis, 14° *Aprilis* 1853.

LORDS PRESENT:

The LORD PRESIDENT.
Earl of ALBEMARLE.
Earl of HARROWBY.
Earl of ELLENBOROUGH.
Viscount CANNING.
Lord ELPHINSTONE.
Lord MONT-EAGLE.
Lord COLCHESTER.
Lord WHARNCLIFFE.
Lord WYNFORD.
Lord STANLEY of Alderley.
Lord MONTEAGLE of Brandon.
Lord BROUGHTON.

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

Right Hon. T. P. Leigh.

14th April 1853.

The Right Honourable THOMAS PEMBERTON LEIGH, Chancellor of the Duchy of Cornwall, is examined as follows:

3733. *Chairman.*] YOU are a Member of the Judicial Committee of the Privy Council?
I am.

3734. You have been frequently in the habit of attending the hearing of Indian appeals?
I have attended pretty regularly from the beginning of 1844 till the middle of last year, since which time I have sate only once or twice.

3735. Will you be good enough to state to the Committee the opinion you have formed, during that time, of the expediency of having appeals from India to some Court in this country?
My opinion is, that it is very desirable that there should be such appeals, for several reasons: in the first place, I think that the appeal here is important, as compelling the Judges in India to pay proper attention to the cases which come before them; in the next place, I think it is an important link in the dependence of India upon this country; and, lastly, I think it is important, because there are many cases where the governing powers in India have an important interest in the questions before the Courts in India which ought not to be decided without control on the part of this country.

3736. Lord *Monteagle* of Brandon.] Supposing, as has been suggested, Appeal Courts were established in the different Presidencies in India as substitutes for the appeal to the Privy Council, do you conceive, from the character of the appeals you have seen, and your experience with respect to them, that there would be any possibility of keeping up, by that means, an agreement and harmony of decision between those distinct Indian Courts, in the same way as is likely to be produced by having a Common Court of Appeal in England?
No, I should think not, unless there were one general Court of Appeal constituted for all the Presidencies.

3737. In your experience, have you known cases in which you think that, from the fact of the Government of India being a party in the case, there is greater likelihood of obtaining a satisfactory judgment by a wholly independent

Right Hon. T. P. Leigh.

14th April 1853.

Court, like that of the Privy Council, than by any Indian Court of Appeal under the jurisdiction of the Company?

I think so.

3738. Do you remember a case in which the Collector of Benares was a party?

Yes; I think there were two cases of the Collector of Benares; one not very long ago; it is a case not yet reported, I believe.

3739. Was not that a case in which the Government of India had a distinct interest?

Certainly; the officers of the Government; I do not know whether the Government itself had.

3740. Earl of *Ellenborough.*] Was not there a case of the Rajah of Benares, which occurred in 1842 or 1843, in which the Privy Council found that a sum of about 50,000 *l.* was due to the Rajah from the Government of India?

I do not remember it; if it was in 1842 or 1843, that was before I sat as a member of the Judicial Committee, and I am not able to speak to it.

3741. Lord *Elphinstone.*] Was not there a case lately from Madras, the Vassaraddy case, in which the Government had an interest, and in which the Privy Council reversed the decision of the Local Court?

In the original Vassaraddy case, upon which I sat, and in which I delivered the judgment, the Government of India had no interest, that I am aware of. The case has since come on again, in some proceeding lately from Madras, the particulars of which I am not acquainted with.

3742. Lord *Monteagle* of Brandon.] Were there not some cases, with respect to the resumption of lands, in which the Government of India had a direct interest?

A very immediate interest.

3743. Was not the result of the judgment of the Privy Council, in the case that came before them, upon the resumption question, to establish, in protection of the title of the occupant, a certain limitation in point of time to the claim of the Government, which had been refused by the Court sitting in India?

The effect of the judgment was to establish a limitation. I can hardly say that it had been refused by the Court in India, because it did not very distinctly appear, upon the proceedings, whether the point had been properly raised there or not; and that was one of the difficulties in the case when it came before the Judicial Committee.

3744. But, practically speaking, you reversed the Indian decree?

We did.

3745. And that reversal was for the benefit of the occupants of the lands?

Yes.

3746. Does that instance afford additional illustration of that which you stated as to the importance of having an ultimate Court of Appeal, standing, in point of station and position in England, independent of any Indian influence whatever?

Very much so; it is one of the class of cases to which I should refer as confirming my opinion.

3747. Several witnesses have spoken of the vexatious use which may be made, and has been made in some cases, of the power of appeal; does your experience enable you to state whether such cases exist, and if they do exist, whether they could be guarded against?

I cannot say that my experience furnishes me with the remembrance of any case which I should say had been appealed for purposes of vexation.

3748. Earl of *Harrowby.*] From your experience, do you conceive that the limitation which now guides the power of appeal to Europe is a proper limitation, or would you think it desirable to alter it, in the way either of admission or of exclusion?

I have not had my attention called to it; it must be a matter almost arbitrary.

3749. The power of appeal is now determined by the amount in question in the case?

Yes, 10,000 rupees; but although that is the only case in which the Court below can give power of appeal to this country, there have been special cases in which the Judicial Committee upon petition to them have given liberty to appeal, although they did not come within the rule as to amount; for instance, in cases of marriage, cases of legitimacy, and other cases where you can hardly put a pecuniary value; I think there have been such cases.

3750. *Chairman.*] Would there be any possibility of confirming the power of appeal to questions of law, as distinguished from questions of fact?

I do not think that would be possible; the truth is, that the law and facts are so much involved, that it is hardly possible to separate them; but by far the greater proportion of cases are cases in which the facts are much more disputed than the law.

3751. Would the Supreme Court of Calcutta, for instance, if that were made the Court of Appeal for the whole of the Presidencies, have much more opportunity than the Privy Council of ascertaining the facts of the case upon the appeal?

No, I am not aware that they would.

3752. Earl of *Harrowby.*] Have the Court of Appeal any new facts before them which have not been before the Court of Inferior Jurisdiction?

No; there is a power given to the Judicial Committee by the Act of Parliament which establishes the Tribunal, if they think fit, to admit new facts and to try new issues, but it has never been acted upon that I am aware of; in a regular appeal nothing can come before the Appeal Court but that which had been before the Court below.

3753. Lord *Monteagle* of Brandon.] Then in that case of resumption, how was it that the question of limitation was brought more distinctly before the Committee of the Privy Council than it was considered to have been brought before the Indian Tribunal?

The facts were exactly the same in both cases; but whether the point of law arising out of the facts had been raised in the Court below did not distinctly appear: that however was not a case, strictly speaking, of appeal from a Court of Justice; it was an appeal from Special Commissioners, the Revenue Commissioners, who are not a Court of Justice, but are instituted solely for the purpose of determining questions of revenue between the Government and individuals.

3754. *Chairman.*] Has it been your duty, yourself, frequently to reverse decisions in Indian cases?

I believe I have pronounced a good many judgments reversing decisions below; at least I have written them, subject to the approbation of the other members of the Judicial Committee, and have delivered them.

3755. From the great attention which you must necessarily have paid to the cases which have come before you, what is your general opinion with respect to the administration of justice in India, distinguishing between the Sudder Adawlut and the Supreme Court?

That is a very large question, which it is extremely difficult to answer; I can speak to nothing but the impression which a constant attendance for a series of eight years has produced upon my mind: the difficulties are enormous in the administration of justice in those Courts; and, considering the peculiarity of the Courts themselves, and of the people with whom they have to deal, I should say upon the whole, that justice is as well administered as one can reasonably expect under the difficulties which they have to struggle against.

3756. Lord *Wharncliffe.*] Did you find great difficulty in dealing with cases coming from India by appeal?

Very great.

3757. In what respect?

The greatest difficulty is the utter impossibility of believing one single word of Hindoo testimony.

Right Hon.
T. P. Leigh.

14th April 1853.

3758. Earl of *Harrowby.*] But they have no greater facility in that respect in the Courts in India?
Very little more.

3759. Lord *Wharncliffe.*] Do you find much difficulty from the mode in which the proceedings are drawn up and transmitted here?
I think our labour is very much increased by the mode in which the cases are usually presented to us: a vast mass of papers is generally printed in the appendix, many of them often irrelevant to the matter in question, and without any order or arrangement; so that the difficulty of getting at the facts is very much increased.

3760. Earl of *Ellenborough.*] They are not presented to you in a business-like way?
They are not usually presented in a business-like way; but the whole of the materials are generally there.

3761. Lord *Wharncliffe.*] Does not it often happen that cases come here by appeal from India, which depend very much upon Indian law, and which it is found very difficult to dispose of in this country?
We often have great difficulty in disposing of them; not only there are frequently questions of Indian law, but there are many different species of Indian law; there is Hindoo law, Mahomedan law, and Parsee law; and those laws are varied by the customs of particular districts, and particular tribes, and particular families; in those cases, when any questions of difficulty arise upon the law, the Courts resort to the opinions of their law officers, their Pundits or their Kazis; and those opinions being given are transmitted, together with the other documents to this country, to the Court here, which judges of them as well as it can.

3762. Is it the habit of the Court of Appeal here to rely upon the opinions given by the Indian law officers upon questions of that kind, and to assume them as the basis of their decision?
We do not regard them at all as conclusive; indeed they do not always agree with each other. We consider them, and give them the weight which in each case, in our judgment, they appear to deserve. We have the assistance usually of Judges who have sate in Courts in India; we have their assistance either as assessors, or as at present, in the person of a member of the Committee. We have authorities upon Indian law to refer to, reports of cases and treatises, many of which are very valuable, which have been published by former Judges in India, and other persons who have studied the laws and usages of the country.

3763. Do you conceive that the difficulties arising out of circumstances of that nature are such as to render an appeal to the Privy Council a process which produces a decision founded upon imperfect data?
I think in many cases you must be doubtful about the decision which you ought to pronounce, as is often the case in all other appeals; but I do not know that if the appeal were in India there would be any better means of arriving at a decision.

3764. Lord *Stanley* of Alderley.] Have there been any large proportion of cases in which the decisions of the Court below have been reversed?
Speaking generally, I think about one-third, but I have not made any calculation of them. Though I believe there never was a better Judge than the one who presides over the Supreme Court of Calcutta, it has so happened, I believe, that the reversals on cases from that Court have lately been more frequent in proportion to the number of appeals, than in cases from the Sudder-Court.

3765. Earl of *Ellenborough.*] You have now, as a member of the Judicial Committee of the Privy Council, a gentleman who has been Chief Justice in Bengal?
Yes, we have.

3766. Do you think it would be convenient if some gentleman who has acted in the Sudder Adawlut in Bengal, and the administration of law in the Mofussil, were likewise a member of the Judicial Committee of the Privy Council?
I think he could not properly be made a member of the Judicial Committee. To be so, he must be made a Privy Councillor, and would be entitled to sit upon

all appeals, whether from India or elsewhere; and the Judges of the Sudder Court are not, ordinarily speaking, lawyers.

3767. Assuming a Judge in the Sudder Adawlut to have been for 20 years in the Judicial Service, engaged in the administration of the law in the Mofussil, would there not be convenience in having such a person, on his retirement from India, associated with the Judicial Committee of the Privy Council?

I think there might be a convenience, occasionally, in having a gentleman of that description as an Assessor of the Court.

3768. *Chairman.*] The present member of the Judicial Committee, Sir Edward Ryan, before he became a member of the Judicial Committee, acted as a sort of Assessor to the Court?

Yes. There were three Judges who had been in India, and who acted as Assessors.

3769. But you do not think that so good a system as the present?

I think nobody should be a member of the Judicial Committee merely because he has sat as a Judge in India. Sir Edward Ryan is a distinguished lawyer and a most valuable member. As regards the assistance which is required, it may be as well given by Assessors. What you want is the knowledge of Indian customs, Indian habits, and Indian law, which the Judges in this country have not.

3770. Lord *Monteagle* of Brandon.] Were not the late Sir Henry Russell and Sir Alexander Johnstone so associated with the Judicial Committee of the Privy Council?

Sir Alexander Johnstone was, and Sir Edward East. I do not remember Sir Henry Russell sitting there.

3771. Earl of *Harrowby.*] Do you ever call in the evidence of persons expert in the law of the different Provinces of India, to give an opinion upon the law prevailing in those districts?

Not in this country.

3772. Is not evidence of that sort admitted before the House of Lords in questions of jurisprudence. Are not French or German lawyers brought as authorities to give evidence as to the law of those countries?

Not in appeals; the principle of appeal is, that you are to review the judgment pronounced below, upon the grounds upon which the Court below pronounced it; and you do not receive any new evidence in the Court of Appeal. In other cases, such evidence is often given. Foreign law is a fact to be proved, as any other fact, by those competent to prove it.

3773. *Chairman.*] You stated that, from what you saw of the cases which came before you, the difficulties in the administration of the law in India seemed to be very great; was the principal difficulty the one which you subsequently mentioned; viz., the difficulty of believing the witnesses in either their written or their oral statements?

There are many other difficulties. In the first place, the multiplicity of laws which the Judge has to consider; in the next place, though he may have acquired a knowledge of the language of the country in which he is presiding, he cannot have acquired that familiarity with it which a Native possesses with his own language; and, in the next place, if he has that acquaintance, many documents may come before him in different languages, not in the language of the country in which he is acting, and of which he has some knowledge; and the officers to whom in those cases he is obliged to trust are not, of course, always very able, nor possibly very learned, and the law itself is often very unsettled.

3774. With respect to the first difficulty, arising from the complex nature of the law, might not that be remedied by the introduction of one uniform code?

You may alter the whole of the laws of India, but I think you must alter the whole system throughout India before you can do that—their religion, customs, and everything else.

3775. Lord *Wynford.*] If that were done, there would still be required a knowledge of the judgments of the different Judges, because there would still be Judge-made law under the new code?

Yes.

3776. Lord

Right. Hon. T. P. Leigh.

14th April 1853.

3776. Lord *Monteagle* of Brandon.] Is there any instance of a code that has ever been known, in any quarter of the world, which has not been subject to modification, either by subsequent enactments, or by judicial determination?

Not that I ever heard of.

3777. Lord *Wharncliffe.*] Can you give any idea of the expenses of an appeal from India?

I have not the least idea, except that they must, of course, be very great.

3778. You do not know what the actual expenses of an ordinary appeal would be?

No, I do not.

3779. Could any alterations be made in the procedure relating to appeal to this country, which would have the effect of diminishing the expense?

Certain members of the Judicial Committee have lately been making inquiries with a view to that subject; I was not one of those members, and I do not know what has been the result of it.

3780. Have they reported?

No, they have not reported; they have taken a great deal of evidence upon the subject.

3781. *Chairman.*] You have no arrears of Indian cases before you now?

There are no arrears, properly speaking; that is to say, there are no cases ready for hearing which are not either heard or on the point of being so; but I believe there are many cases which have been transmitted to this country, under leave, to appeal, which have never been entered or prosecuted, and which are now lying in the office.

3782. Does that arise from the difficulty that the London solicitor has in receiving remittances from India?

I could speak to that merely from what I have heard suggested from others.

3783. Earl of *Ellenborough.*] Has it ever occurred to you that if the mind of a practical English lawyer, acquainted with the language of the country, had been applied to the adjudication of the cases that have come before you on appeal, the decision given in India would have been a very different one?

I dare say there are many cases in which it would; but I cannot say that the impression which has been made upon me is that that would be generally the case.

3784. Lord *Wharncliffe.*] Do the appeals from the Company's Courts in India generally betray a considerable want of knowledge upon matters of law?

We have only to consider, in strictness, the decisions of the Sudder Court; the decisions of the inferior Courts do not come before us, except incidentally; they come before the Sudder Court, and incidentally come before us, but only so far as may be necessary in judging of the ultimate decision. It appears to me that, generally, the cases have been sifted with very great labour, and that great attention has been paid to them.

3785. Are there many decisions inconsistent with the rules of evidence?

I do not know what the rules of evidence are in India; they are not English rules of evidence; they do not act upon the English rules of evidence in the Native Courts.

3786. Does it appear to you that there is much inconsistency in the rules under which the Courts in India act?

No, I can hardly say that. Then, again, I must observe, that in an appeal you have only to consider the merits of the decision appealed against. What evidence has been received, or what evidence has been rejected, unless it is a matter of appeal, which I do not ever remember it to have been, does not come before us. We have to judge upon the materials upon which the Court below has acted.

3787. Can you state at all what length of time, after a case has been decided in India, is required, in order to bring the decision by appeal before the Privy Council?

No; I can only say, from having cast my eye over the evidence which has been given before the members of the Judicial Committee who have been inquiring into

Right Hon. T. P. Leigh.

14th April 1853.

into the matter, that if due diligence were used, and funds were at hand (the want of which, I believe, generally constitutes the great difficulty), I should think it could hardly be less than 18 months or two years, and, practically, it is a great deal more.

3788. Lord *Monteagle* of Brandon.] Having before you, at the Privy Council, not only Indian appeals, but also Colonial appeals to a considerable extent, have you the means of forming any approximate judgment with respect to the mode in which justice is administered, as distinguishing the Colonies from India; is there much superiority or inferiority in the one as compared with the other?

I think it is impossible to answer that question, the Colonies are so differently circumstanced, and each Colony has different circumstances of its own.

3789. Lord *Elphinstone.*] Have you any appeals from Ceylon?

I do not at present recollect any appeal from Ceylon.*

The Witness is directed to withdraw.

GEORGE CAMPBELL, Esquire, is called in, and examined as follows:

G. Campbell, Esq.

3790. *Chairman.*] WILL you be so good as to state to the Committee what is the appointment you held under the East India Company?

I belong to the Bengal Civil Service; I hold no specific appointment.

3791. Lord *Mont-Eagle.*] Are you the author of a work entitled "Modern India"?

I am.

3792. *Chairman.*] How long have you been in the service of the East India Company, and what offices have you held?

I have been about 10 years in the service; I have been a little more than eight years in India. On first going to India, I was a few months at Calcutta, learning the language there; then I was attached to the North-Western Provinces, and served my official apprenticeship under the Magistrate and Collector of a district. I held the office of Assistant Magistrate and Collector for some time, and then acted as Joint Magistrate and Deputy Collector, which is the next higher grade.

3793. Will you state the places where you were?

At Budaon I was Assistant; and afterwards, in the district of Moradabad, I was Joint Magistrate. After serving about three years in the North-Western Provinces, on the annexation of territory subsequent to the war of 1846, I was promoted to the charge of a district in the Cis-Sutlej States.

3794. What district?

The district of Khytal first; I had the charge of every district almost in the Cis-Sutlej States during the next five years. For a short time I was specially employed to assist the Commissioner for those States; and I also had in charge the office for the suppression of Thuggee and Dacoitee in the new territories; I am now Associate of the Court of Queen's Bench, and have had a little official experience in that way.

3795. Have you given up that office?

No; I have the permission of the Company for holding it.

3796. Have you had any means of forming an acquaintance with the mode in which the administration of justice is conducted in any other parts of India besides those you have mentioned?

No personal means; but I have taken a good deal of trouble to learn from others, and to compare the differences of system; but otherwise I have no personal knowledge, beyond being a few weeks in a district of Bengal with a brother of mine.

3797. Have you published some works on the state of India generally?

I have.

3798. Will

---

* It has since occurred to me that there has been one case from Ceylon.

G. *Campbell*, Esq.

14th April 1853.

3798. Will you state what is your opinion of the present administration of justice in those parts of India with which you are personally acquainted?

I think it is necessary to distinguish between criminal and civil justice; I have been all my official life employed in criminal matters; but as regards the Civil Courts in the Regulation Provinces I cannot speak of them as a professional witness; I have no professional knowledge of them, and I can only speak of them generally from mixing with the Natives and with the inhabitants as a spectator. My impression is, that the administration of civil justice in the Regulation Provinces is exceedingly unsatisfactory; but that there is not so much ground of complaint with regard to criminal justice. That system also is certainly defective in a great degree; but then the Judges have very great experience as Criminal Judges, and they have some system to go upon. I think the principal ground of complaint is, that they adhere too exactly to an artificial system; they come too nearly to what a criminal trial would be in England, whereas the circumstances of the country are considerably different; and it may often happen that forms of procedure, which in this country are designed to protect the liberty of the subject, have in India sometimes had the effect of protecting criminals.

3799. Are you speaking now of the Courts in which Native Judges preside, or in which European Judges preside, or of both?

I have spoken of both generally at present; but in the Criminal Courts till very lately the Judges have been almost exclusively European, and in the Civil Courts; on the other hand, the Judges in the first instance are for the most part Natives.

3800. Do you attribute the defect which you have just mentioned to the state of the law, or to the habits of the European Judge?

Certainly not to the habits of the European Judge; because, on the contrary, I believe the official habits of the civil servants of the Company go a long way to compensate for the absence of other qualifications; but I attribute the fault principally to the want of a good system of law, and in a great degree also to the peculiar system of the service, by which a man has no experience till he is made a Zillah Judge, as regards the jurisprudence of civil law, although he has a large experience personally as a judicial officer.

3801. In your intercourse with the Natives, have you found much dissatisfaction to be felt with the state of the law?

I think that the Natives, who are certainly the best judges of points which press directly and practically upon them, complain with very great reason of the extremely artificial system which prevails in our Civil Courts, and also as regards the Criminal Courts, that there has not been a sufficient supply of smaller Courts. They have great reason to complain of the inconvenience to which they are put in prosecuting criminal cases; I think that is a grievance of a very crying description.

3802. Do you refer to the difficulty of prosecuting criminal cases where the defendants are Europeans?

No; I mean any cases in which they have occasion to prosecute, owing to the distance of the Courts, and the number of times that they have to repeat their evidence before different Courts in serious cases.

3803. Are you acquainted with the labours of the Law Commission?

I cannot say that I am professionally acquainted with them; I have paid a little attention to the subject.

3804. Have you formed any opinion as to the causes of the failure of that Commission?

I should hardly think myself competent to express an opinion upon that subject.

3805. Lord *Monteagle* of Brandon.] You are aware of the objects that were in the view of the Law Commissioners. Without going into the mode in which they executed them, do you consider that the objects of reducing the whole system of law in India as far as practicable into a code, and of facilitating the administration of the law by establishing a convenient mode of procedure, are objects in which the well-being of India and the administration of law there are deeply involved?

G. Campbell,
14th April 185

I think that upon those two objects, more than all other matters put together, depends the good administration of justice. I may mention that the Law Commissioners did not apply themselves to the subject of civil procedure; they have never taken up the subject. With regard to criminal procedure, they have only touched it very slightly; they have not drawn out a code of procedure of that kind; they have merely addressed themselves to the substantive criminal law.

3806. Are you not aware that they have sent in, amongst others, a complete project of law procedure?
They have sent in, I believe, what they called suggestions towards a code of criminal procedure; but I do not think they ever made a regular code.

3807. Are you aware that they sent in a regular Bill, prepared in a state in which they considered that it could be carried into legislative effect, for establishing a Lex Loci for the Mofussil?
I believe it was proposed to establish the English law as the Lex Loci; but I am not aware that any code for the purpose of establishing a Lex Loci was ever drawn up by the Commissioners. I was not aware that that was the proposal of the Law Commissioners; I knew that the Draft Act had been published.

3808. Earl of *Ellenborough.*] In the North-Western Provinces you administered the same law, civil and criminal, which is administered in the Lower Provinces?
Exactly; the same law is administered.

3809. What law did you administer at Khytal?
A criminal law; very nearly the same as the law of the Provinces; we were not strictly bound by that law, but in practice we did, with little exception, conform to it, except that we depended a good deal more upon the responsibility of the Zemindars, that is, of the villages. I think we carried it to an extent to which it could not have been carried under the Bengal Regulations, especially in Bengal Proper, where it has been found that the Magistrates have no control, even over the village watchmen.

3810. What instructions had you with respect to the administration of the Criminal Law when you went to Khytal, Khytal being a newly-acquired territory, only acquired in 1843?
Our instructions were to conform to the spirit of the Regulations.

3811. In short, to do what you pleased, taking the Regulations as your guide?
It did not amount practically to that, because most of the officers employed were officers from the North-Western Provinces, who considered that they should act under the system under which they had been accustomed to act; but in the Criminal Department they acted simply under those general instructions to act up to the spirit of the laws, which was in fact acting under those laws. And in the Civil Department of Justice we had a special code of our own, which entirely differed from anything prevailing in the Regulation Provinces. In the Revenue, we had special instructions, which were, for the most part, conformable to those of the North-Western Provinces.

3812. How did the Civil Code, which was different from that prevailing in the Regulation Provinces, originate?
I do not know the history of the code, but I believe it came from some other Non-Regulation Province; I am not sure whether it was Assam or Arracan, but it came from there in some shape, and was adapted in the Secretariat office, and sent down to us.

3813. Then you had it in a printed form?
Yes; but it was subsequently that we received that code. I think we had some written instructions first, and in a year or two afterwards, about 1849, when the Punjab was annexed, we had it in a printed form.

3814. You had nothing but mere written instructions for the whole administration of the Civil Law of the country?
I am not sure as to the date when the rules were printed; but I now remember that we had them before the annexation of the Punjab, because I know our rules were applied to the Punjab; we had them as soon as they could be conveniently drawn out after the acquisition of territory in 1846.

ampbell, Esq.

April 1853.

3815. Were those instructions which you received for the administration of civil justice in Khytal in any detail?

The rules of procedure were in considerable detail, amounting, in fact, to a system of procedure.

3816. You do not know who was the author of that code?

No, I do not.

3817. Did you ascertain what had been the previous Civil and Criminal Law of Khytal before 1843?

So far as there was any law at all; but I should say that there was none.

3818. Were not the people very well satisfied with the Government; did they not show it by making fight against you when you took the country?

Not the people.

3819. The people of the town?

I believe not the people of the town; I believe it was only the followers of the Court of the deceased Prince who were not yet ejected. I had charge of the town in time of war, at a time when there were numerous conspiracies or rumours of conspiracies; and I had not a single soldier of any kind.

3820. What other places *nominatim* in the Sutlej territory did you administer along with Khytal?

To the Khytal district was attached the territory of the Raja of Ladwa, and also a great number of those petty protected Sikh States lying between Kurnal and Umballa, and along the Jumna; they were at first under political charge: I was called, among other offices, Political Assistant; but they were afterwards brought under our criminal system.

3821. Were those territories still under the government, to some extent, of their Native Princes?

At first they were; then two or three years afterwards, upon the ground of their having been lukewarm and backward in supplying the army and fulfilling the obligations of their tenure as protected chiefs, they were brought under our administration so as to make them simple Jaghiredars.

3822. Was that done with them all without exception?

No; there were nine exceptions.

3823. Was not Patteealah excepted?

Yes, Patteealah and four or five other of the larger States; Jheend was excepted, and also Nabhah, although the Rajah of Nabhah behaved very ill.

3824. Lord *Elphinstone*.] Did not Patteealah receive an accession of territory?

A small accession.

3825. Earl of *Ellenborough*.] Did you ever carry on the administration of the territory ceded by Lahore on the left bank of the Sutlej?

On the left bank I did.

3826. Were you ever on the right bank?

I have been there, but not in official charge.

3827. You administered the territory ceded by the Sikh Government according to the same form as you administered the territory of Khytal?

Yes, except that we gradually became more settled; when I first went to Khytal, it was in a very irregular state.

3828. Are you aware of the Criminal Code established in the Punjab; is it not different from that which you administered at Khytal?

No; I should say it was exactly the same up to the time when I left; I know that our Civil Code of Procedure was introduced into the Punjab, and I believe that the criminal system is exactly the same, and also the revenue system; they are all under the same administration now; I do not think that any considerable changes have been made.

3829. Are you aware that in the interval between the first and the second war great changes were introduced by the British officer in charge of the Punjab both as regarded the civil and the criminal jurisdiction?

At that time there were some changes in the Punjab, because it was under

the

the Native form of Government, and it was in a kind of transition state; European officers were sent as supervisors of particular districts; but I do not think any entire changes were made; I do not think that any district at that time was administered in the European form.

3830. *Chairman.*] Is there any reason for those different systems being established not only as between the Regulation and Non-regulation Provinces, but as between different Non-regulation Provinces?

I believe, as far as I know the different Non-regulation Provinces, that there is a considerable similarity in the system of the different Non-regulation Provinces; I believe that the regulation system, so far as concerns the Civil Courts, has not been found to answer; that there is a feeling that it has not succeeded, and, therefore, there is an unwillingness to impose the same system on other territories; I think it is only in the matter of the Civil Courts that there is an essential difference in the administration.

3831. Lord *Elphinstone.*] It does not follow that the system which would be applicable in the Tenasserim Provinces would be equally so in the protected Sikh States?

Certainly not the system in the Tenasserim Provinces, because they are out of India; but, I think, any system which has been found to answer well in one part of India, I should be much inclined to try in another part of India.

3832. Earl of *Ellenborough.*] Are you acquainted with the administration of justice in the State of Patteealah?

I had a good deal of intercourse with Patteealah and the people of that State, but I think that the Patteealah Government is a sort of paternal Government, who administer everything according to their own will and pleasure; I do not think there is much system.

3833. Were you ever in a Native Court of Justice in a Native independent State?

I do not think that in the independent States with which I have had acquaintance there are any formal Courts of Justice, except in the territory of the Jheend Raja, and he has followed our system; he has imitated our Courts in some degree.

3834. Lord *Elphinstone.*] Generally speaking, in those States, is there any separation between the revenue and the judicial authority?

None whatever. Every Kardar administers justice, though he does not hold formal Courts.

3835. Earl of *Harrowby.*] How is justice administered if there are no formal Courts?

When the question is between the Government and the subject, the Government acts according to its own will and pleasure; and when it is between two subjects, if the Kardar can settle the matter amicably, he does so; and if he cannot, he probably has a puncheyat, and settles it in that way.

3836. Earl of *Ellenborough.*] If a subject of Patteealah has committed an offence in our territory, and we desire that he should be given up or placed under proper restraint, how does the Kardar proceed?

He writes to the Tannahdar to seize the man and send him.

3837. To find him if he can?

Yes.

3838. What means has the Tannahdar; what police has he; has he any village police at his disposal?

He has no more village police than we have; in fact there is no strict system of village police; but the Zemindars and heads of the village are held responsible for the police of their own village. He goes to the village of which the man is an inhabitant, and calls upon the heads of the Zemindars to find him; and if the Zemindars do not find him, he stations men, who receive so much a day, at their doors till they produce him.

3839. In fact, the Government of the country is a popular Government, is it not?

I think so; I think the Patteealah people are tolerably well pleased with their Government;

Campbell, Esq.

11 April 1853.

Government; it is not at all a systematic Government according to our ideas. They still take the revenue in kind, which most of the States have abandoned. They have very little system; in some respects it is a partisan Government. They are very severe upon their own people who do not do all they wish; but they always strongly defend and support all their subjects who get into difficulties in supporting their wishes.

3840. In point of fact, they never emigrate into our district, do they?

Yes, I have known several instances of emigration into our districts. I remember one instance in particular which gave a great deal of trouble. In making exchanges we tried to round off our territories. There were a number of detached villages, and in trying to round off our territories by exchanging those little detached villages, we came upon one or two villages of ours which were inhabited by men who had run away from Patteealah, whom I wished to make over to Patteealah, those villages being inconveniently situated for us; but they were unwilling to make the exchange; they threw themselves upon us. I should explain, as regards Patteealah, that I do not mean that there is any general emigration from that territory to ours. I have had to transfer villages to them; and I have generally said to the Patteealah Vakeel, "Do you want to have these villages? If you do, get the consent of the Zemindars first; you must arrange the matter with them;" and they succeeded in getting the Zemindars not to oppose the transfer.

3841. Lord *Stanley* of Alderley.] With regard to those villages which were not composed of refugees from Patteealah, did you find the residents indisposed to be made over to Patteealah?

Not always; the Vakeel generally succeeded in getting their consent; probably he may have promised them some advantages.

3842. Did any of those people express a regret at ceasing to be under British protection?

In some instances they did.

3843. Did you ever hear any expression of dissent, on the part of the inhabitants of Khytal, at the change in the administration of justice since it came into the possession of the British?

No, I should not be likely to hear it if there was any dissatisfaction, because it is not the Native fashion to tell what they think in such a case to the representative of the Government. But I do not think they had any reason to find fault. There were some vilages of Khytal which kept up a kind of fight with the Government. In one village they maintained a republic inside their gates, and they paid the revenue outside. From the time of the conquest of the country, I believe no Khytal official ever came within the precincts of the village, but they paid regularly to the Rajah the rent which they had stipulated. There was another village which was particularly delighted to come under our rule; they held out against the whole united Sikh States. The Khytal people failed in putting them down: they held out seven years, but at last the united Sikhs succeeded in destroying it, and till our rule they were expelled. They came back again when we took possession.

3844. *Chairman.*] To return to the subject of the Civil Law, which you consider to be in a very defective state, would you wish it to be remedied by codification?

I think it would be extremely improved by codification; and as even a rough code would be better than no code at all, I think an improved code of procedure would be a very simple work.

3845. Do you think that a commercial code is required?

I think a commercial code is required above all things. There are a great many things connected with commercial matters which stand very much in need of improvement.

3846. Earl of *Harrowby.*] Is there no commercial law prevailing over the whole of India at the present moment?

There are commercial customs in some respects, but I do not think they are anywhere to be found in the form of a law.

3847. Lord *Elphinstone.*] Do those customs differ in different parts of the country?

I have no doubt they may in some respects differ, but I have not had any intimate knowledge of commercial customs in different parts of the country, not having been a professional Civil Judge in the Regulation Provinces. My more minute experience of the civil law is entirely confined to one circuit.

3848. *Chairman.*] What is the position of the Government when they are parties to proceedings in the Civil Courts?

In the Civil Court the Government is on exactly the same footing as any of its subjects.

3849. Do you think that any favour is shown to the Government generally, or the reverse?

Certainly no favour. I should think that, if there was any difference, it was probably rather the reverse, because the Judges like to show their independence, and they are more likely to take part with an injured subject than with an injured Government.

3850. Do not the Judges look to the Government to a certain degree with reference to their future career?

The Judges do so, I should say, comparatively little, because the judicial officers are less seldom promoted than others, so that they have less to expect from the Government.

3851. Practically, therefore, you think that the Government are rather under a disadvantage than otherwise in proceedings in the Civil Courts?

As far as the Judges are concerned, I would not say distinctly that the Government are under a disadvantage; but I think they are so far under a disadvantage, that they appear upon perfectly equal terms so far as the Court is concerned, so that, on the one side, you have a man who has his interest strongly involved, and who probably is not very scrupulous; and on the other side you have the Government represented by a Government officer, who does not feel himself justified in acting as a partisan.

3852. Who is the Government officer who represents the Government in civil suits?

The Collector.

3853. Do you think that there ought to be a Government Advocate?

I think that it would be a very excellent thing if we had it put upon something like the same system as that which exists in France, where the Government Advocate occupies a privileged position in Court, and appears not quite upon a level with the subject, and manages matters on behalf of the Government as a sort of Assessor in some respects. And, especially, I think it would be a good thing to have Government Advocates, because I think it would afford very good training—a very good school for those who are to fill judicial offices. I think that, in a country circumstanced like India, very great inconveniences result from selecting the Judges from persons who have had private practice, and so become involved in private connexions and private affairs; and that it would be a very excellent thing if the persons who are to fill those offices, both Europeans and Natives, were to commence as Advocates to the Government, and to be promoted from that, as they are in France, to the lower judicial offices, and from those to the higher.

3854. From your personal experience, what opinion have you formed as to the training of the civil servants with reference to their becoming Judges?

I am very strongly of opinion that some judicial training is necessary. But as to the question, whether the Judicial line should be entirely separated from the Executive, I think that that very much depends upon this, whether the criminal law and the law concerning landed tenure are to be administered by the same Judges who decide suits in civil and commercial affairs; if they are, I think it is quite necessary that the man who is to be a Judge in criminal matters, and in very intricate questions of landed tenure, should have been a Magistrate and a Collector first. But, in that case, I do not see how it is possible that he can at the same time be trained as a Magistrate and Collector, and also trained as a Civil Judge. I would very much prefer to maintain as a part of the Executive the criminal administration, and also the judicial determination of landed rights, and to make the Judge a mere Judge of civil and commercial matters, excluding criminal justice and landed tenure.

3855. Supposing

G. Campbell, Esq.

14th April 1853.

3855. Supposing such a separation to be made as that which you propose, do you still think it would be desirable that the Judge, who would have to decide civil and commercial cases, should have become acquainted with the Natives by serving in the Collector's Department?

No, I think not; I think he might become as well acquainted with the Natives in the other department; because I have found, from experience, that though the knowledge which a man acquires in the Collector's and Magistrate's office goes a long way, as far as regards the personal part of judicial knowledge, and as far as regards understanding the Natives and examining witnesses, yet that he gathers very little knowledge of commercial customs and habits and of civil law such as he requires for the cases in dispute in the Civil Courts. Now if he were employed from the beginning in the department of civil justice alone, he would have every opportunity of becoming acquainted with the Natives personally, and of understanding their language and their manners, and of examining them as witnesses in that department; and, at the same time, he would be learning jurisprudence, and the matters which are litigated in a Civil Court, with which he would not become acquainted in the other office.

3856. Will you explain to the Committee exactly what you would propose to do with the person whom you would destine to fill the office of Civil Judge after his arrival in India?

If the Judicial Department is to be separated from the other, then what I would propose is this: supposing him to go to India with some judicial education, then I should like to see all judicial officers sent to some place where the Natives also are educated. I should like to have some sort of college of justice, some establishment where we might manufacture laws and manufacture lawyers at the same time; and I should like to see young European judicial officers sent there to learn the language, and to become acquainted with the Natives, and with the Indian system of jurisprudence.

3857. And to be subject to an examination on leaving?

Yes.

3858. Then what office would you give him on his first leaving that college?

What I have proposed is to make him in the first instance an Advocate of the Government. I think it would be desirable that he should have some practice in that way at head quarters, where there may be supposed to be a number of cases going on, where English may be a good deal used, and where he may gradually acquire the language and the jurisprudence at the same time. And then when he is sent into the Provinces, I think that if you had a grade of officers employed as the Advocates of the Government, it would be a very useful thing. Of course he would act with the assistance of the Native Vakeels, and in communication with them he would probably learn a great deal.

3859. Is there not this difficulty at present, that by employing more largely the Natives in the subordinate judicial offices, you thereby lose the opportunity of training Europeans?

There is no doubt that that result has followed as regards civil justice.

3860. You would propose to get rid of that difficulty by the creation of this new office of Government Advocate?

I apprehend you would have subordinate Judges also. I think you might decrease the number of Zillah Judges if you had subordinate Judges; and then, by elevating some Natives to the higher judicial offices, and putting some Europeans in the lower judicial offices, you might pretty nearly balance the numbers.

3861. Lord *Monteagle* of Brandon.] In describing the course of a civil servant about to prosecute his career in India towards the Judicial Bench, you assumed that he has acquired some legal knowledge before he left England?

Yes; I do not assume that it is now the case, but that it ought to be so.

3862. You have been, of course, at Haileybury?

I have.

3863. Do you consider that the portion of time and of instruction which is at Haileybury devoted to law and jurisprudence, and kindred subjects, is adequate to give the preliminary instruction to which you have referred?

Certainly not. I may also add, that I may almost call the study of that subject

G. Campbell, Esq.

14th April 1853.

and kindred subjects, a voluntary study, because a man may pass through the college with a little of Oriental languages, and a very small smattering indeed of one or two other subjects, without having studied law at all.

3864. Does the same remark apply when we talk of kindred subjects, subjects standing in close relation to jurisprudence, and bearing upon it, such as history, political economy, and other subjects?

I allude to those subjects; political economy I should mention as one of the most popular subjects. If a man is obliged to do something in European subjects, he generally takes a little political economy.

3865. Do you consider that the portion of time which is devoted at Haileybury to the study of Oriental languages is advantageously devoted for the future success of the student?

I think certainly not. I will not say that it is of no benefit, because the mere learning the alphabet, and that kind of thing, is of some benefit, though very little; but I think it is time wasted, which might be much more usefully employed, as regards a great part of that Oriental study.

3866. Taking your own career in India, should you say that the courses of study at Haileybury, Sanscrit and Arabic, were of any important use to you?

Certainly not of the smallest use whatever.

3867. Are not those subjects placed in almost unnatural prominence in the studies at Haileybury?

I think quite so. I should explain that by my own experience. It has been supposed that a talent for languages is a very necessary part of the qualifications of the Indian civilian. Now I always had a want of natural talent for languages, and I apprehended a little difficulty on that score; but in the parts of India in which I have been, I have found that only one language has prevailed, with the variations of the Native dialect, which are something like the difference between Yorkshire and Dorsetshire, and that is a language which one must learn, and cannot help learning; it is only a question of two or three months sooner or later. If I had had the greatest talent for languages, I should only have understood it a few months earlier, and that being once done, one does not feel the question of language at all.

3868. Is that a language taught at Haileybury?

To a very limited extent. They profess to teach three languages, and in an inverse ratio to their usefulness: Sanscrit, which is of no use, they teach most; the Persian holds the middle place; and Hindostanee, which is the useful language, they only teach at the last.

3869. Do not they teach Arabic also?

Not systematically.

3870. In what way do you think that the English education of a young candidate for the civil service in India could be made more available for his future success and for the public benefit?

I think that Haileybury, as it stands now, might be made much more available by giving up, to a great extent, the Oriental languages, and substituting European subjects; but, at the same time, I should have great doubt whether you would ever have a sufficient test of proficiency. Haileybury is an isolated place, where there is no independent standard to compare with; and there is such an indisposition to reject a man, and ruin him, and put an end to his prospects, that you probably never would have a sufficient test.

3871. In what year were you at Haileybury?

I left it in the year 1842.

3872. Are you aware that, under the last Charter Act, a provision was made, by which four candidates were to be submitted to an examination for every vacancy, and the more successful and more eminent of those candidates was to be selected for the vacancy?

Yes.

3873. Do you consider that that was a check upon the undue nomination of persons unsuited for the Indian service?

I think the principle of selection would be a check; and I should be very happy

G. Campbell, Esq.

14th April 1853.

happy to see, taking the average of mankind, that one out of four should be selected. But I have no doubt it must necessarily be the case, that if you are bound to nominate three who are to be rejected for every one who is to pass, that all those who are not likely to pass will decline the nomination altogether, and you will then have to select the men nominated; and then, out of those select men, you must reject three-fourths; it might even be difficult to get the number of men to go up.

3874. Even supposing the result was to present to Haileybury only select men, each of the four being well qualified, would not that be a great improvement upon the present system, although it might be hard upon the individuals selected?

It would amount, I believe, to unlimited competition. You would have the best man selected. But I do not think that any test, on entering college, can ever be sufficient, because I do not think that sort of examination could be made strict enough without producing a cramming education, which, I believe, is most prejudicial in every way.

3875. Therefore you would say that, independently of any examination at admission, the continuity of examinations and the successful pursuit of knowledge in a public establishment is necessary?

Precisely so; it is upon that basis that I would put the test.

3876. Lord *Stanley* of Alderley.] If the instruction in the Oriental languages given at Haileybury is, in your opinion, of very little advantage for the future career of the Indian servants, are there any other parts of the education at Haileybury which could not be as well attained at any other seminary, or any other place?

I think that the opportunities for education at Haileybury are for the most part voluntary at present; but that the education at Haileybury, as far as I know, is not to be obtained at any other place in this country.

3877. What portion of the education now given at Haileybury do you think could not be obtained in any other institution?

The elements of Jurisprudence, Political Economy, and History, and kindred subjects.

3878. Lord *Monteagle* of Brandon.] If the whole of the time which is devoted now to a mixture of Oriental and European subjects were devoted at Haileybury to these subjects, which may be termed peculiarly European, do you think then that the maintenance of a European education of that character would be important for the future formation of the Civil Service of India?

Of very great importance; almost indispensable, I think.

3879. Lord *Elphinstone*.] Do you think it would be better to maintain a separate institution like Haileybury, or to allow young men who are at college elsewhere to come into competition?

I think, if you are to have a special education, you must supply the means of that education; you must endow professorships; now, supposing a man is to be educated at Cambridge, it appears from the Cambridge Commission Report that professorships of political economy and of law, and of Oriental languages, are things which the Commissioners strongly recommend, if sufficient funds can be found; they think that those branches of knowledge have not been sufficiently carried out, and extremely desire that they should be so: you must supply the means of education somewhere for young men, and the Government will, I suppose, only consent to supply it in one place; therefore, I think the education must be carried on in one place; but I do not think you should have an isolated establishment.

3880. Supposing those professorships were established at Cambridge, do you think that in that case it would be better to keep up a separate establishment for education for the East India Company's Service, or to admit young men from all the colleges?

I think that considerable arguments may be urged either way; but I myself should like to see all the men at one college. I think it should not be a strictly exclusive college; they should mix with other men; but I think it of considerable advantage that they should all be at one college, and quite necessary that they should be at least at one place, or one university.

G. Campbell, Esq.

14th April 18[illegible]

3881. If there be a separate college for the education of young men for the Civil Service, will it not always be a hardship to reject candidates after they have been undergoing a course of study, perhaps for two or three years?

If you have a separate isolated college as Haileybury is, I think that is the greatest possible difficulty and objection; and that is the main difficulty in regard to plucking men sufficiently: professors do not like to pluck young men who consider that they are in the profession already; it is like turning a man out of a profession.

3882. Does it not appear to you that that difficulty would not equally exist if they were at Cambridge, for example?

No; it might then be altogether got over.

3883. Lord *Monteagle* of Brandon.] Do you think it possible, with respect to European training, that adequate care can be taken to perform the duties which this country owes to India, except at the hazard of, or the certainty of causing occasional cases of hardship, which come under the term of plucking?

I think you must have not only occasional cases, but very frequent cases.

3884. *Chairman.*] Would there be any hardship upon a man who went to the college with the previous knowledge that he ran the risk of doing so?

Then the appointments would be much less sought after if there was a probability that they would be rejected, and thrown upon the world, and branded. That, I think, would be the great objection to a separate college. Perhaps it might be a good plan if you said that all men who wished to go into the civil service must go to Cambridge, where they would find facilities for the instruction necessary for their future profession, and that they must take certain honours; or that if it is unlimited competition, that the men who take the highest honours in the Moral Sciences Tripos should be appointed.

3885–86. You said that there is great difficulty in professors plucking candidates after examination; would not that be obviated, to a great degree, if you had examiners independent of the professors by whom those young men have been educated?

To a certain extent, but I doubt whether examiners, who know nothing of the young men before, could judge so well; I think it would come more nearly to the same sort of examination as you have at entrance, if it were an independent examination.

3887. Lord *Broughton.*] Are you not aware that, at Addiscombe, the most difficult part of the examination is undertaken by officers from Woolwich, who know nothing whatever of the young men?

I do not know any particulars of the system at Addiscombe; I believe it is a very strict examination.

3888. Lord *Wynford.*] Would there not be, to a certain extent, a difficulty and apparent cruelty, where you have bred up three or four men in one exclusive line of education, in then throwing them back upon the world, and ruining their prospects; and was not that the objection to the project of selecting the best from the four?

That, I suppose, must be matter of opinion with regard to education; some people may think that jurisprudence and political economy are not injurious to a man in comparison with classics.

3889. If you make the education more general, that hardship does not exist?

No, certainly not.

3890. Lord *Monteagle* of Brandon.] If a strict examination be necessary, in order to the proper performance of the duty of selecting persons for the civil service, and if the action of such examination be practically a limitation upon the patronage of the East India Company who nominate, is it not essential that the persons conducting the examination should be independent of the East India Company?

I think so, quite.

3891. Can there be any reliance upon the examination; taking mankind as they are, as long as the persons examining are putting a limitation, and some-

times a strict and apparently hard one, upon the appointments of those from whom they derive their own nomination?
I think, certainly not.

3892. Lord *Mont-Eagle.*] You think the examination, at present, is not nearly strict enough?
I think, certainly not.

3893. Lord *Broughton.*] Do you not think that there might be appointed, independent of the East India Company, a Board of Examination to sit in London at stated periods of the year, consisting of competent persons, who might examine the young men appointed to writerships for the civil service; the young men being allowed to be educated where they choose in any part of the country, and then to present themselves to this Board for examination, and if upon examination they are found competent, then to receive their appointment?
I think that, by that plan, you would lose all the advantage of special education, and I also think the test would not be so good, that it would be a system of cramming for the examination.

3894. You do not think that cramming now takes place for the East India Company's College?
It does for entering into the College, but not for getting out of it.

3895. Lord *Wharncliffe.*] If it is your opinion that the instruction in the Oriental languages is not required in this country, and that Haileybury, as a special place of instruction, supplies very little more than a smattering in the matter of judicial instruction, in what would consist the special instruction which you think it necessary to provide for civil servants going to India?
In the first place, with respect to Oriental languages, I do not say that they should learn nothing of Oriental languages; but I think they should learn only so much as can be as well learnt in this country as in India, which amounts to the alphabet, and a few of the commonest words, and a little of the grammar. I think there need be no danger of Oriental languages being too much neglected; it is one of the things that the Commissioners at Cambridge lament the want of, a Professorship of Oriental languages. Then I said, that, in other subjects, the education at Haileybury is voluntary; but there are opportunities for education, and I think an extended education in special European subjects very necessary.

3896. What are the branches of special instruction which you think it would be most necessary to provide here for persons going into the civil service in India?
I think a little jurisprudence you would want for all. For those whom you would select for the Judicial Department, after they have passed, and after they have been admitted to the service, you would have some further instruction; but for all I would require jurisprudence, political economy, history, and, perhaps, a little engineering.

3897. Then, if it were possible to arrange a system by which persons intended to enter the Indian service were allowed to find that special instruction in other places, there would, in your opinion, be no objection to such a system?
Of course, if you suppose that they are to find it, it must exist somewhere.

3898. Those are, of course, branches of instruction which might be provided in this country at other places; there seems to be no reason why the instruction in the principles of juridical science and political economy should not be provided in other institutions in this country?
Supposing it were so provided, I think there is still the objection which I have mentioned before as to cramming. The examination at present for admission into Haileybury seems a very strict examination; it seems exceedingly strict to any person who is not initiated into the way in which it is done. The young men leave public schools two or three years before, and go to a private tutor to cram them, and it is done in such a way that they know almost the questions that will be asked.

3899. Do not the evils of the cramming system apply to any arrangement by which a special place of instruction is provided for these young persons?
That is before admission; it does not apply to examinations after admission.

3900. Does not that system also prevail in the preparation for examination at Haileybury?

G. Campbell, Esq.

14th April 1853.

No, not at all; I believe they have too much to do in preparing for the India House examination to do anything beyond that; and then, when they are at Haileybury, there is no opportunity for cramming; there are no cramming tutors, and there is no one to cram them.

3901. With respect to Oriental languages, you say that it would be scarcely possible to communicate any useful instruction in Oriental languages in this country; supposing that that branch of instruction were entirely withdrawn from Haileybury, or from any place at which the education of the civil servants took place in this country, in what way would you recommend that that instruction in Oriental languages should be given?
I would do but little in Oriental languages in this country.

3902. Do you think that what they could obtain in the Oriental languages in this country is sufficient to make it desirable to continue that as a regular branch of instruction in preparing for the Indian service?
To a certain extent; I would have one professor of Oriental languages.

3903. Then, a young man going out to India would go out with a very small amount of knowledge of Oriental languages?
Yes.

3904. How would you provide that he should obtain that familiarity with the Native languages which is requisite for the discharge of his duties in the civil service in India?
I would insist upon his passing an examination before he is employed in any considerable duty.

3905. Where would you have that examination?
In India.

3906. At the Presidency?
No, not at the Presidency. I should particularly like to see the system of keeping young men at the Presidency, where they learn very little, and do a great deal of mischief, done away with. I would send them up the country to the Collectors of districts.

3907. Immediately upon their arrival in India?
Yes.

3908. You would have them sent up immediately, and provide that they should undergo an examination—where?
In the interior.

3909. Who should be the persons to examine them?
With respect to the first examination, I would merely have an examination in the vernacular language, to see that the man understands a paper read to him, and can make himself understood. I think that examination, which would be a very simple matter, might be conducted by the Commissioner and the Judge, and one or two others, in each division as a Committee.

3910. Lord *Monteagle* of Brandon.] Are the Committee to conclude, from the suggestions which you have thrown out on the subject of the education of young civil servants, that you wish their time to be applied in England to those branches of study which they can learn best in England, and in India to those branches of study which they can pursue most effectually there?
Exactly so.

3911. I believe you know something of Cambridge?
Not very much; I was at Cambridge the other day, and I have taken some trouble in making some inquiries upon this subject.

3912. Considering that at Cambridge, all its greatest honours, all its traditional glories, and its general scope of education, are directed to mathematics and to classics, do not you think that, supposing the branch of Oriental instruction for the Civil Service were added, there would be considerable risk that it would be viewed altogether as a secondary subject, and that that branch of education would not be so effectual as if it were given in a special place?
I do not wish to see much Oriental education. It is education designed for Oriental purposes that is wanted; but it is jurisprudence and political economy,

G. Campbell, Esq.

14th April 1853.

and history, and one or two other subjects, which are all not more peculiar to the East than to the West.

3913. Do not you think that if the species of education which you contemplate carrying on in Europe for the benefit of the Civil Service in India were made merely an adjunct to a great University like that of Cambridge, the temptation of the old course of study would be so great as to throw into the shade altogether this special course of study, especially as it would not be made one of the subjects for which high degrees and honours would be given?

A Moral Sciences Tripos is now established at Cambridge.

3914. You are aware that, even with respect to the short experience which we have had of the Moral Sciences Tripos, it is found that the attractions of the Mathematical and the Senate-house examinations, and the Classical Tripos, are such as to make the moral science a matter of questionable success?

For this reason, that the other Triposes lead to honours; they lead to fellowships; they lead to emoluments; whereas the Moral Sciences Tripos leads to nothing at all. If it led to Indian appointments that were worth having, I think it would be appreciated on account of the prizes to which it led.

3915. Are you not aware that, until within a very short period, one of the most distinguished gentlemen who has ever passed through Haileybury, obtaining every honour that could be conferred upon a student there, Mr. Lushington, upon the completion of his studies, felt the attraction of European pursuits and Cambridge education so strongly, that he abandoned all his prospects of Indian appointments to go to Cambridge?

He did.

3916. *Chairman.*] Is that the first instance of the kind?

It is not of very frequent occurrence; but there is no doubt that such instances will sometimes happen as long as the Indian service is, to a great extent, a seniority service. As long as brilliant men do not think they find it to their account to go to India, of course there will be, to a great extent, a temptation to prefer the chance in this country; because, of course, the higher rewards of a profession in this country are more brilliant than anything which they can hope to have in India.

3917. Have you had an opportunity of comparing the papers for the legal examination prepared at Haileybury during your own experience, or the papers on political economy prepared at Haileybury, during your own experience, with the correlative papers prepared at Cambridge, and if so, to which would you give the preference?

No, I have not particularly compared the papers; but I have had conversations with Cambridge men. One of the most distinguished Cambridge professors is a gentleman who was once at Haileybury. I have talked with him a good deal upon these subjects; and in fact, the Haileybury professors are for the most part Cambridge men; so that, though one has not direct knowledge upon the subject, one has considerable opportunities of comparing facts; and it seems to be generally considered, that the study of political economy and kindred subjects is neglected, and is not yet brought to any considerable perfection at Cambridge.

3918. Have not the papers, both upon law and political economy at Haileybury, from the days of Malthus, Mr. Jones, and Professor Empson, been exceedingly well calculated for the instruction of the young men?

Very well, if the young men had been able to answer them.

3919. Earl of *Harrowby.*] Would it not be of great importance for young men going to India to go previously prepared by reading books upon Indian affairs and Indian history?

I think so; except that there is a want of any good works of that kind.

3920. Are books of that kind generally accessible all over India to young men engaged in the Civil Service in different parts of India?

I do not think they are accessible much anywhere; men learn principally from experience; 99 out of 100 of the Europeans who have lived in India and write and talk about it, have not the most remote idea how the country is governed.

3921. Then is it not, therefore, very important that they should go out to a certain degree prepared by the acquisition of that knowledge in their own country?

I have

I have no doubt of it, so far as is possible; in the Historical lectures at Haileybury, attention is principally directed to that.

3922. Lord *Elphinstone.*] You were understood to state that you propose to divide the service into two branches; the one to conduct the administrative duties, together with criminal justice, and the other to conduct the civil and commercial judicial business?

That is what I should like to see established.

3923. If you divide the service into two branches, would you make any difference between the examination in this country of the candidates for the one branch, and for the other?

I would make a very material difference; I would carry them about half-way together; they should go half-way together, and should learn a good many things in common, including the first elements of jurisprudence; and after that, they should be separated; and then the legal examination would be totally different in the one case from what it would be in the other.

3924. They would require a certain knowledge of jurisprudence even to conduct the administration of criminal justice?

They would, certainly.

3925. Lord *Colchester.*] Do you think it is of no advantage to the service that all the young men intended for it should be brought up together so that they should have a previous knowledge of one another?

I think it is an advantage, and on that account I should like to see them all at one college rather than distributed throughout England; I think it is very desirable that they should know something of one another.

3926. And they thereby get something of an *esprit de corps?*

Yes; and men work together in a way in which I think they would not if they were utter strangers.

3927. Does it come within your experience whether those who have distinguished themselves most at Haileybury have generally turned out the most distinguished persons in after-life?

Of course much the larger proportion of those who distinguish themselves at Haileybury are those who distinguish themselves afterwards; but there are large exceptions.

3928. Do those who distinguish themselves most in educational learning turn out, generally speaking, the most distinguished men in after-life, or do other qualities come into play which more than counterbalance that advantage?

To a certain extent the latter supposition is true, and more so than it would be otherwise, on this account, that the Oriental languages constitute so preponderating a part of the education at Haileybury, and that many men who are good linguists are not distinguished by practical qualities.

3929. Lord *Wynford.*] Is there anything peculiar in the education required for the Indian service that it should be confined to Cambridge, and not be extended to Oxford?

I am supposing that increased facilities were established at some one place, and I believe that could be more easily done at Cambridge; they have tended much more in that direction; for instance, the religious tests at Oxford would be an insuperable bar at present.

3930. But the course of study at Oxford would be no impediment at all?

I believe there is no Moral Sciences Tripos at Oxford.

3931. *Chairman.*] You stated that you thought it desirable that a college should be established in India for the legal education both of the Natives and of the civil servants who are destined to fill the offices of Judges in the Civil Courts; where would you place that college?

I should like to have it placed at the seat of the Supreme Government, supposing the Supreme Government to be placed where I should like to see it. But, I think, if the Supreme Government is at Calcutta, there would be insuperable objections to having the college either for Europeans or for Natives there, because the climate of Bengal is most hostile to the Natives of other parts of India, as well as to Europeans.

3932. Earl

G. Campbell, Esq.

14th April 1853.

3932. Earl of *Ellenborough.*] If the college were established at Calcutta, would not that circumstance deter the Natives of the Upper Provinces from resorting to it?
It would.

3933. Do you think that you could induce the Natives of high rank to go to any college at all?
I think so.

3934. Are there any persons of high rank at all at any of our colleges?
I have known very little of the Natives with reference to their education at the colleges; in fact, all the best of the Natives up the country do not know a word of English; they have had nothing to do with those colleges. I do not know what the case is in Bengal, where college education has been carried a good deal further. I have known Natives of very respectable condition who have been educated in colleges; I will not say of high rank, but I should think there would be no objection on the part of those of high rank.

3935. What do you mean by "very respectable condition"?
I mean sons of Jaghiredars of one or two villages, and considerable Zemindars.

3936. But the higher the class of persons, is not the difficulty the greater to induce them to come to a college; is it not the more contrary to their domestic habits and modes of feeling?
The higher the class, the more difficult is it to get them to do anything practical or useful, to make them exert themselves in any way.

3937. *Chairman.*] What is your opinion as to the aptitude of the Natives for the judicial office?
I think they are extremely apt.

3938. What measures should you recommend for the elevation of the moral tone of those who are employed in judicial offices?
I think that must be done gradually; the pay of the lowest grade of judicial officers is perhaps inconsistently low in comparison with the powers which they exercise. But I think the great thing to promote purity is to have sufficient laws and a sufficient system, so that a man has no excuse for going wrong; I do not think there will be any insuperable difficulty in respect to corruption.

3939. You see no difficulty in employing the Natives in the highest judicial offices?
So long as the office does not partake of an administrative character, I think there would be no objection to having a Native Judge of the Sudder or of any collective Court; but I should not like to give a single Native the superintendence over other Judges, and a discretionary power with regard to them.

3940. Supposing, as has been suggested by some other witnesses, that a Supreme Court should be constituted, consisting of an amalgamation between the Supreme Court and the Sudder Adawlut, would you have any objection to see a Native introduced into that Court?
None whatever.

3941. Lord *Broughton.*] Do you think such an amalgamation would be advisable?
I think that it would not be advisable, but very much the contrary, under the present system, if one Judge is to be appointed by the Crown, and to consider himself a Crown Judge, and another to be appointed by the Company, and to consider himself a Company's Judge, and the Crown Judge is to override the Company's Judge; but if both Judges have their appointments from the same source, and are equal in rank and in pay, and in every way, I think that till we have a regular judicial system, it may be desirable that one or more jurists should be appointed to the Court.

3942. Do you think that the jury system, generally speaking, is applicable to Indian society in the Mofussil?
I think an Indian jury, as we understood it in India as regards civil cases, is most applicable, and is a most marked indigenous institution in the country, and one which might be applied with the greatest possible benefit, so as to relieve us from a mass of difficulties which now involve us; but I do not think that a jury

such

G. Campbell, Esq.

14th April 1853.

such as we have in England would act well in India; and perhaps it does not act well in any other country in the world.

3943. Lord *Elphinstone.*] You mean a punchayet?
I mean a punchayet.

3944. Not such as they have in the Tenasserim Provinces, where they have twelve jurymen?
No; I believe they try criminal cases; I do not think that in criminal cases a jury would ever be an efficient instrument; in fact, it is tried at present; every Judge in the Upper Provinces has a jury of Native Assessors; but they do not consider it a duty incumbent upon them to judge between the Government and an individual; if there are two equal sides, they will judge between them; but when you have the Government on one side and an individual on the other, if the Government wishes them to convict, they will convict; if the Government does not wish them to convict, they will perhaps give the benefit to the individual.

3945. Lord *Monteagle* of Brandon.] Do you think that the aid of a jury in civil cases would be useful with respect to the want of trust and confidence in the Oriental evidence that is produced?
Yes; but I should also state that in my opinion the want of trustfulness of Oriental evidence is very much exaggerated; it has always seemed to me that it is much easier to get at the truth if the Judge only understands his duty, and goes about the thing properly, than is commonly supposed; but if you have only a number of affidavits, and so much swearing is taken as so much evidence, of course you will never get at the truth.

3946. Earl of *Ellenborough.*] How did you take evidence when you administered justice at Khytal?
There is not time to take every word orally before the magistrate; but when the case comes on, there are perhaps half-a-dozen writers, three on one side of the room and three on the other; and they take down the evidence of the witnesses; and then it is brought up with the witness and read over, and the Judge puts such further questions as he thinks necessary; he cross-questions the man, and ascertains the essential points.

3947. Is it read over openly?
Yes.

3948. So that the witness knows whether it is truly taken down?
Yes, the witness knows exactly what is taking place; there is never a witness of any importance who is not cross-questioned by the Judge; for the evidence taken down by the native writer is often very great trash; it is very irregular evidence; but it saves time by getting at the main body of a man's evidence.

3949. Did it ever happen that a witness dissented from the statement of his evidence given by the writer who had taken it down?
I have never known any reason to suspect fraud in taking evidence in that way, simply for this reason, that it would not pay; it would be found out—if not the first time, it would be found out the second time; it is almost impossible that such a thing can be done when the Judge and the witness both understand the language.

3950. Are there six witnesses under examination at the same time?
Yes, there may possibly be so.

3951. And you read consecutively the evidence of each witness, and put any questions that occur to you?
Yes.

3952. Lord *Elphinstone.*] If the writers put down irrelevant questions and answers, which are of no use, is not more time lost in reading those questions and answers than would be occupied in taking the evidence properly at first?
No, because they read the irrelevant parts so fast; we try to get writers skilled in taking evidence, but still it is a thing in which they are very deficient; there is no getting a Native to understand what is evidence and what is not.

3953. Have you any statement to make to the Committee with regard to the promotion of the civil servants to the office of Judge in India?
I should wish to state this, that I believe it is not the case that men are, as a rule, made Judges simply because they are not fit to be Collectors; but

G. Campbell, Esq.

14th April 1853.

I should first explain that the name of Collector is a misnomer, which has misled a great many people; he is the administrator of a district; and, as far as administrative duties are generally considered more important than judicial, he is and ought to be considered a more important officer; but it is the case in the part of India which came within my own experience, that the executive charge of a district is a prize to a man; it is his first considerable promotion, and it is the thing to which all men look to arrive in due course; even the best and most distinguished men are glad to be promoted to that office in the first instance. From that grade a good many of the best men are eliminated to fill higher offices, and those who remain become Judges in course of seniority. Of those who become Judges, a good many are promoted to better appointments, and all those who are not distinguished in any way remain Judges to the end of their lives; so that it must necessarily follow, without any design on the part of the Governors to make the least able men Judges, that in process of time the average ability of the Judges must be below the average ability of the Collectors.

3954. Earl of *Ellenborough*.] But, in fact, there are sometimes very distinguished men Judges in Bengal?
There are.

3955. Mr. Caldicot, who was afterwards appointed First Commissioner at Saugor, was a man of great ability?
Yes; I do not think he would have ever become a Judge in the Provinces if he had not gone to Saugor, because he would have got something better before he became a Judge.

3956. *Chairman*.] Would not the evil be, in a great measure, remedied by separating the two careers, after a man is once elected, between the Revenue and the Judicial?
That, I think, would be one of the most beneficial results of the change; that you would have a certain set of men for the one, and a certain set of men for the other, and you would have a fair average of men in each. I should like to explain, that when I have spoken of my experience in Bengal, I should rather have said in the North-Western Provinces; because, in Bengal Proper, there is so far this difference: the Collector is not so important an officer in Bengal, and his salary is a good deal less than that of a Judge, and there are fewer appointments out of the regular line of promotion; so that most of the Collectors in Bengal wish to be Judges, and in due course become Judges; and, therefore, the Judges are nearly as good men as the Collectors in Bengal Proper, unless they are too old.

3957. Lord *Monteagle* of Brandon.] Supposing that, after a certain amount of preliminary training, the civil servants entered upon the judicial service and looked upon that as their status, do you think that in the judicial service the principle of seniority ought to be strictly adhered to, or selected?
I think the principle of seniority certainly ought not to be strictly adhered to; but I doubt the possibility of getting rid of it altogether; I think you must have something among the junior branches in the way of examination. When a man comes to be of 20 years' standing, you know what he is; but in the first 10 years, without examination, if you go altogether on the principle of selection, you would not be sure that you are always selecting the right man.

3958. Earl of *Ellenborough*.] Did not the system of acting appointments, which led to such frequent changes of men from one station to another, render it very difficult to discover what a man's abilities were, because he remained so short a time in one place?
I think it interfered with the efficiency of the service; but on the other hand, if a man is changed about, there are more chances of his being known; if he is not known in one place, there is great probability of his being known in another.

3959. Lord *Elphinstone*.] You would have a different examination for those who go out in the judicial branch and the revenue branch?
Yes; but the question which is debated is, whether it is necessary to give a man some training in India in a Magistrate's and Collector's office, and therefore whether you must not separate them at a later point.

3960. That you would get over by separating the judicial business from the revenue?
Yes.

G. Campbell, E.

14th April 185

3961. Earl of *Harrowby.*] You are of opinion that a preliminary legal education would be no bad thing for a Collector?
No; on the contrary.

3962. His functions are often semi-judicial?
They are so to a large extent.

3963. Lord *Elphinstone.*] In the Non-regulation Provinces the law that has been administered has combined both revenue and judicial matters in the same functionary?
Yes; and at one time I was strongly impressed that that would be the best system; but I must say that, on further experience, I have come to the conclusion that it is necessary to separate them before you can have an efficient system, because there are so many things connected with civil law which natural reason does not teach one, and which a very simple foundation of law would make much more easy if you had them fixed one way or another; but if the criminal administration and landed tenures be not separated from the administration of civil and commercial law, rather than that a man should be at one time a Magistrate, at another a Collector, and at another a Judge, I should like to see all three offices united, so that a man commencing as Assistant, and learning all these duties, should gradually rise to be the head of a district in all departments.

The Witness is directed to withdraw.

NEIL BENJAMIN EDMONSTONE BAILLIE, Esquire, is called in, and examined as follows:

N. B. E. Baillie Esq.

3964. Lord *Broughton.*] I BELIEVE you were for some time in India?
Yes, I was, for about 20 years.

3965. In what part of India?
I resided entirely at Calcutta.

3966. How were you employed?
I was an Attorney of the Supreme Court of Calcutta, and I was also a Pleader or Vakeel in the Sudder Dewanny Adawlut; for about six years I held the office of Government Pleader in that Court.

3967. Do you understand any of the Native languages?
I understand Hindostanee, and another language, which ought also, perhaps, to be considered a Native language—Persian—although it is no longer the language of the Court; and I understand some Arabic.

3968. Earl of *Ellenborough.*] And Bengalee?
Very little Bengalee.

3969. Lord *Broughton.*] What are the special duties of a Vakeel?
They are very much the same as those of a Barrister and Attorney in this country. The Vakeel is the only practitioner in the Company's Courts, and he performs the whole duties of Barrister and Attorney, so far as they can be said to be performed.

3970. Do you think that the whole of those duties are efficiently performed by the Vakeels?
I do not think they are performed to anything like the same extent to which they are performed in England, and that the consequence is, that the Judges are not assisted in the same manner, and that great additional onus is therefore cast upon the Judges.

3971. How would you improve the performance of those duties?
I think that some incentives to improve themselves ought to be held out to the Vakeels. I think it would be advisable to select Judges for the Native Bench from the Vakeels, and perhaps, also, something might be done in the way of improving their education. Further, something might be done with a view to increase their remuneration, which is very small in some cases, and quite inadequate to the labour which is imposed upon them.

3972. Are not the proceedings in the Company's Courts very dilatory?
They are very dilatory.

N. B. E. Baillie, Esq.

14th April 1853.

3973. How do you account for that fact?

I think that it may be accounted for in a great measure by the large amount of business that they are required to do. In all cases there may be an appeal. The consequence is, that all the pleadings and proceedings are written; the evidence also is written, and everything is preserved as matter of record; and in consequence I think a great deal of time is lost.

3974. Could you reduce that mass of business in any practicable and beneficial manner?

The way in which it occurs to me it might be reduced, to a very considerable extent, is by separating a very large portion of the cases, which I think admit of easy and summary decision, from the other cases. Those I allude to are chiefly small debt cases; and I am informed (I do not know it from my own knowledge) that the great majority of cases which are brought into the Moonsiff Courts are very much of that character, and that they are therefore easy of disposal, and of such a nature that they might, as far as the cases themselves are concerned, be summarily disposed of without appeal. If there was any method of doing that, I think it would reduce, to a very great extent, the large amount of business that is now thrown upon those Judges.

3975. Are the pleadings, as they are at present conducted, such as to bring out those points which would be likely to decide the questions at issue?

The pleadings themselves are very ill adapted to bring the parties to an issue. Each party tells his story in his own way, and it is frequently exceedingly difficult, after the plaint and answer, and reply and rejoinder are filed, to say precisely what the matters are in dispute. But there is a proceeding in the Courts by which that is limited to a very great extent. The Judge is authorized, after perusing the pleadings, to question the parties, or their Vakeels, as to the matters in dispute, and having thus ascertained them, he settles the issues, and evidence is not allowed to be called, except upon some or other of the points so settled by the Judge.

3976. Do you think it would be advisable to have the parties themselves personally examined?

I think the examination of the parties is certainly calculated, to a great extent, to elicit the truth, but that, at present, in India, it might be attended with some difficulty, always to subject the defendants to examination. The Natives of India do not like, in general, to appear in Courts of Justice. I think it is possible that a rich man, against whom a suit was brought, would rather pay the demand than expose himself to be so examined. Therefore, generally speaking, I do not think it would be fair always to subject the defendant to that personal examination. I think the plaintiff might always be subjected to it, and that instead of that proceeding, which the Judge now holds, after the filing of the four pleadings, the Judge should examine the plaintiff immediately upon his filing his plaint, and ascertain from him what the real points in issue are; and that he should then call upon the defendant categorically to answer them, aye or no, in writing. If he did not do so; if he did not meet the allegations directly, I would then give a power to the Judge of summoning him, and examining him personally.

3977. You have, no doubt, seen it stated frequently, that the evidence given in the Courts of Justice in India is not to be depended upon; if that be so, how do you account for that fact?

I am afraid that it is very much the case. I do not know that I could account for it in any way, that would really lead to any practical result, and perhaps it would be as well that I should not state any speculative opinion upon the subject.

3978. I understand you to say, that the Native evidence is very frequently untrue?

I am afraid that it is very frequently untrue; at least I have observed in the decrees of the Lower Courts the expression, that the evidence of each party is "merely in support of his case."

3979. Without having any reference to the real facts?

Yes.

3980. Have you seen anything of the working of the jury system?

My experience was entirely confined to cases af appeal, and in those of course there was no jury. I believe that juries are occasionally summoned in some cases in

N. B. E. Baillie, Esq.

14th April 1853.

in the Mofussil, but I can give no opinion as to how the system works in India. I can, if the Committee please, offer an opinion upon the subject generally as to what I think of the introduction of juries in India.

3981. Will you state your opinion upon that subject?

My view of juries is this: I think that in England, where juries have the guidance of a Judge, and have the facts well examined before them by intelligent Counsel, who elicit everything from the witnesses, juries are in a situation very favourable for an impartial judgment upon the fact; and that if the system could be transplanted precisely in that form to India, it might be attended with very considerable advantage. But I do not think that can be done, and juries would have to act without the guidance of the Judge, and without the intelligent examination of witnesses by Counsel, and the assistance which is afforded to them in this country, by keeping away from them everything that can possibly embarrass or distract their judgment; and that being the case, I think the jury system is not likely to be attended with much advantage in India.

3982. Lord *Monteagle* of Brandon.] When you use the word "jury," will you have the goodness to say, whether you include in that merely a jury formed after the English fashion, or whether you would apply your observations to an Indian jury or punchayet, or any of those systems of Assessors which have been used in different parts of India in aid of the administration of the law?

I have no personal experience at all of punchayets, and, therefore, I can hardly venture to offer an opinion upon the subject. With regard to Assessors, they are occasionally used, and I rather think the jury system was only in the form of Assessors in Bengal. I have heard it said that Assessors are useful by suggesting important questions to the Judge; but I do not think that, in civil cases, that system would be of much advantage; the professional agents, if they do their duty (and so far I think they are efficient to perform it), can suggest those questions to the Judge which would be suggested by the Assessors.

3983. Do not you consider that the introduction of an agency of that description, whether under the title of Assessors, or Jury, or Punchayet, might afford some assistance in discriminating between evidence of the character you have described, so open to suspicion, and evidence of a better character?

I think that perhaps Native Assessors would be better able to discriminate between the different kinds of evidence; but I do not attach much importance to that, nor think that upon the whole they would be able to come to a better judgment upon the issue than a single Judge.

3984. Lord *Broughton.*] Is there at present any improper obstruction to appealing?

There is a heavy stamp in the first instance, which is called the institution stamp; that is a per-centage; I think five per cent. in many cases, but I do not recollect the rate in all, but it is a rather heavy per-centage. That institution stamp is required to be repeated in cases of appeal; and I think that is a very considerable obstruction to appeals, and that it ought to be removed.

3985. Lord *Elphinstone.*] Is it five per cent. upon the amount of the sum in dispute?

Yes; but I think after 10,000 rupees it does not rise in the same ratio, and I rather think it does not in any case exceed 2,000 rupees.

3986. Lord *Broughton.*] Do you think that the Natives of India generally are very prone to litigation?

I cannot say that I think them particularly prone to litigation: I think a great many suits are brought in the Courts, but that may be ascribed in a great measure to the uncertainty of the law; it is exceedingly difficult upon many occasions for a man to say whether he has a right or not, and under those circumstances he will naturally try; I think that is the cause of a great deal of litigation that is frequently ascribed to the litigious character of the Natives.

3987. Lord *Elphinstone.*] Then if the law were better defined, you think that the amount of litigation would be diminished?

That is my impression.

3988. Lord *Broughton.*] You have attended in the Supreme Indian Courts a good deal?

N. B. E. Baillie, Esq.

14th April 1853.

I was constant in my attendance in the Sudder Adawlut when the Court was open.

3989. Are you able to say whether or not you found a diversity of opinion amongst the Judges deciding there?

I found on occasions a very considerable diversity of opinion. Formerly when a Judge was of opinion that a judgment of the Lower Court should be reversed, it was necessary that he should send the case on to have his opinion confirmed by another Judge; if that Judge agreed with him, the judgment of the Lower Court was reversed; if he differed from him, the case went on to another Judge, and so on, until two concurred exactly in the same decision; in that way I have observed a great diversity of opinion amongst Judges; I have known not only three, but four, and sometimes five, and I think in one case as many as eight different opinions: that was a very particular case; it was a case from the North-Western Provinces, where the Judges of the North-Western Court, not being able to come to a conclusion regarding it, sent the case down to the Sudder Dewanny Adawlut at Calcutta, and there it was disposed of by three Judges.

3990. How do you account, generally speaking, for that diversity of opinion among the Judges?

I think it might be partly accounted for by the manner in which the cases were brought first before one Judge and then before another. I think the Judges frequently came to different views of the evidence; the attention of one being directed to some particular facts, perhaps, more than the attention of the others to the same facts, and I think that accounts to a very considerable extent for that diversity of opinion. That cause has been removed now: the Judges sit in two divisions, I think by threes, and, therefore, there is no longer that cause of difference; but there was a good deal of it ascribable also, I think, to the uncertainty of the law: the diversity of opinion being frequently manifested in this way,—the Judges differed not merely upon the fact, but they differed also as to the nature of the party's right. When a party may have a right, but brings his action improperly, he is nonsuited; and when several Judges are of opinion that a plaintiff should be nonsuited, and came to this conclusion upon different grounds, I consider that that can be ascribed only to the uncertainty of the law, and the want of some common standard of judgment to apply to the case.

3991. What is the law that is administered in the Company's Courts, both in the Mofussil and in the Sudder at Calcutta?

The law of the Company's Courts is, of course, the Regulations of the Supreme Government of Bengal, and the Acts of the Government of India. By those Regulations in a certain class of cases—viz., suits regarding inheritance, succession, marriage, caste and religious usages and institutions, the Hindoo law is applied to Hindoos, and the Mahomedan law to Mahomedans.

3992. Is there any mode by which those laws are expounded in the Court, and if so, who expounds those laws?

There are law officers in the Sudder Dewanny Adawlut. The Hindoo law officer is called the Pundit, and the Mahomedan law officer is called the Kazee-ool-Koozzat. Whenever a question of Hindoo law arises, it is submitted to the Pundit, and a question of Mahomedan law is submitted to the Kazee.

3993. Are those Pundits persons who enjoy a good reputation; are they persons who are thought to be honest and respectable, and whose opinion is valued?

I am very sorry to say, that the opinion of the Natives is very much against the honesty of the Pundits; I do not, of course, wish to be supposed to allude to any Pundit in particular, but I should say of the Pundits generally that the Native opinion is very strongly against them as to their honesty; they are usually very clever, very well versed in the law, and their answers are frequently correct, even in cases when there may be some doubt of their honesty.

3994. Lord *Elphinstone.*] Do the same observations apply to the Kazees generally?

They were not intended to apply to the Mahomedan law officers. I think the Mahomedan law officers are honest, and I believe the Native opinion is pretty generally in their favour in that respect. There is a reason for it—besides the character of the officer, the Mahomedan law is very well defined, and it would be exceedingly difficult for the law officer to give a dishonest opinion upon the Mahomedan law, without attracting the notice of many intelligent persons amongst his countrymen quite capable of detecting the error.

N. B. E. Baillie, Esq.

14th April 1853.

3995. Earl of *Ellenborough*.] How are the Vakeels in general remunerated?

The remuneration is now entirely left to agreements between the parties and the Vakeels; formerly it was a commission upon the matter in dispute; that commission was in small cases very trifling, quite inadequate, and generally, although the parties are now left to make their own agreements with the Vakeel, this old commission is still very much adopted, except in very small cases to which it is clearly inapplicable as a standard of remuneration for the Vakeel.

3996. Then they do not receive fees like European lawyers?

They receive this remuneration as a fee, which ought to be paid in advance.

*3997. But a European lawyer does not usually make an agreement with the suitor before he begins?

No.

3998. Lord *Stanley* of Alderley.] Do not the parties select their own Vakeels?

Yes.

3999. Then, will not an able and intelligent Vakeel be much sought after by persons having suits in the Court, and consequently receive a larger remuneration, in order to secure his services?

Of course an intelligent Vakeel will be selected.

4000. Will not he receive a higher amount of remuneration than one who is not so able?

He does not practically receive a higher remuneration, except in very small cases, than that which was fixed by the old standard; he may do so, there is nothing to prevent it; but I believe that in practice he does not often receive much more than that which was fixed by the old standard, unless the case be trivial.

4001. Is not there a competition amongst the suitors to obtain the services of the ablest Vakeel?

There is a competition, certainly.

4002. Lord *Broughton*.] In cases where neither the Hindoo nor the Mahomedan nor the Regulation laws apply, how is the case determined?

There are some very few cases which are determined by the Regulations, but I do not recollect any in particular, except cases relating to the interest of money and mortgages.

4003. If none of those laws apply, how is the case decided?

Then the decision is entirely discretionary; the Judge decides according to his own notions of equity and good conscience.

4004. Are there not practically inconveniences from there being no positive law, and that discretionary power being left with the Judge?

I think there are; there is first the great uncertainty to which I alluded; this I think leads to the bringing of many suits that would otherwise not be brought; practically, therefore, there is a great increase of judicial business in consequence. I think, further, that many suits are wrongly brought from the want of any correct or well-defined ideas of the nature of the right which the parties may have; and that this leads in consequence to nonsuit, and there are in fact very many nonsuits in the Courts of the East India Company. In addition to that, there are not only nonsuits, but frequently evidence is directed to wrong points, from a misconception of the exact right which the party may have, and cases are frequently sent back for re-investigation. I think that in this way there is a great increase of litigation; first, many suits are brought which ought not to be brought at all; secondly, many suitors are nonsuited because their suits are not properly brought; and, thirdly, there are a great many suits sent back for re-investigation, because the investigation in the first instance has not been directed to the proper point; and all this is, I think, ascribable to the uncertainty of the law.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned till To-morrow,
Two o'clock.

Die Veneris, 15° *Aprilis* 1853.

LORDS PRESENT:

Earl of Harrowby.
Earl of Ellenborough.
Lord Elphinstone.
Lord Colville of Culross.
Lord Mont-Eagle.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Ashburton.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

LORD STANLEY of Alderley in the Chair.

Evidence on the Government of Indian Territories.

N. B. E. Baillie, Esq.

15th April 1853.

NEIL BENJAMIN EDMONSTONE BAILLIE, Esquire, is called in, and further examined as follows:

4005. Lord *Broughton*.] YOU stated yesterday that you were not acquainted with the Bengalee language; is not a knowledge of the Bengalee language, if not indispensable, at least almost necessary to a Vakeel practising in the Bengal Courts?

At the time that I entered the Sudder Dewanny Adawlut, the general language of the Court was Persian; the written pleadings and proceedings of the Court were all in Persian; and the oral pleading was [illegible]ally in Hindostanee; it was not till a good many years after that the vernacular languages were introduced. Those languages were not generally introduced into the practice of the Sudder Dewanny Adawlut, with the exception of the Hindostanee, which became the language of the Court's proceedings. Bengalee was the language of Bengal, and the records of suits which came up from Bengal were in the Bengalee language. I found it necessary to acquire as much of Bengalee as was requisite for my purposes; therefore, when I said yesterday that I did not know Bengalee, I meant to say that I was not acquainted with it to anything like the same extent that I am acquainted with Hindostanee and Persian. I have always known enough of Bengalee to be able to understand a Bengalee document, which was the most important point. Afterwards, when the proceedings from the Lower Courts were in Bengalee, I was obliged to get them so far explained to me by my writers as to enable me, with the knowledge I already possessed of it, to plead the causes in the Sudder Dewanny Adawlut.

4006. You stated yesterday certain practical inconveniences which you said resulted from the want of positive law, whether Hindoo or Mahomedan or Regulation law, which could be applied to a particular case; do you think that the English law could be safely and profitably applied generally in such cases?

I should say, generally, it could not. The English law is quite unknown to the Natives of the country, and their contracts and general dealings are made entirely without reference to it; usually, with reference to some particular notions of their own; and the application of the English law, therefore, to such dealings might, I think, be very frequently unjust.

4007. Have you ever considered the question of rendering the highest judicial offices attainable by the Native Judges?

I have sometimes considered it; so far as I can learn—I do not speak much from

N. B. E. Baillie, Esq.

15th April 1853.

personal experience now, because I left India in 1844—the Native Judges seem to me still to require to be under some degree of superintendence, and so long as that is the case, I do not think it would be right to promote them to the higher judicial situations.

4008. At what office would you stop their promotion for the present?

It appears to me that, at present, they cannot well be promoted to higher offices than they now hold. The only judicial offices from which they are excluded are those of Zillah Judge and the Sudder Dewanny Adawlut. The Zillah Judge has, in fact, immediate superintendence over the Native Judges; and, therefore, as I have said that I think some superintendence over the Native Judges in general could not be dispensed with, I do not think they could properly be appointed to that office.

4009. Earl of *Harrowby.*] Do you think no individual Native could be found of sufficient eminence above the rest whose personal character would entitle him to be selected for such offices?

I should not say that; I think it is very likely that there may be among them men quite qualified intellectually, and men who might be trusted, but the promotion of such men might excite some jealousy; and it could not be done generally.

4010. You think that the promotion of such men would not have a wholesome effect upon the whole class from which they were selected, in raising their expectations and showing the value of character?

It might have that effect; but from what I have heard stated in evidence in another place, I am inclined to think it would excite the jealousy of the Natives very much. It is not a subject on which I can speak much from personal experience; but when I heard the opinion expressed by a gentleman of large experience, from my remembrance of the Natives, it seemed to me exceedingly likely that it would have that effect.

4011. Lord *Broughton.*] Have you ever compared the decisions of the Native Judges with those of the English Judges?

I have frequently had occasion to do so. Comparing them singly, I should say that at that time (now nearly eight years ago), I certainly would have given the preference to the decisions of the English Judges. I must, at the same time, admit that when two decisions in the same cause, one of a Native and the other of an English Judge, came under special appeal to the Sudder Dewanny Adawlut, it frequently happened that the judgment of the English Judge was reversed, and that of the Native Judge was affirmed; but then I ascribe that to a particular cause. Those cases were cases of special appeal, which could not be admitted in the first instance into the Sudder Dewanny Adawlut without having some blot upon them, that is, without having something objectionable upon the face of the decree. Therefore, when those decrees came ultimately to be decided upon by the Court, it was not at all unlikely that the first error which was the cause of their admission should prove fatal, and the last decision should be reversed, and the judgment of the Native Judge confirmed.

4012. A suggestion has been made, that perhaps it might be advisable to appoint Barristers from England to the Judicial Bench in India; what do you think of that suggestion?

It appears to me that it would be objectionable, on several grounds. In the first place, I do not think, generally, you could get many English Barristers who would qualify themselves, as they necessarily must in the Native languages, and even if they did so, it would take a long time before they could acquire sufficient experience. In addition to which, I think their peculiar notions on the subject of evidence would rather be an impediment to them than otherwise, and upon the whole I consider the proposal objectionable with regard to the men themselves; but I think it particularly objectionable with regard to the Natives; for I cannot but feel that it would be the creation of a new principle of exclusion, instead of that which they are already, if not reconciled to, at least familiar with.

4013. It appears from the answer which you have just given, that you look forward to a period at which some of the highest if not all the judicial situations in India may be in the hands of the Natives; is that the case?

I certainly do anticipate a period when the Natives will be fully qualified for the discharge of the most important judicial duties; and I think the time will come when

when he may be entirely trusted; but when that time will be, I cannot really venture to predict.

N. B. E. Baillie,
Esq.

15th April 1853.

4014. The answer which you before gave appeared to have reference to that coming time, inasmuch as you objected to the introduction of English Barristers, because it would be the introduction of a new element of exclusion against the Natives?

A new element of exclusion, which I think would ultimately prove to be an element of permanent exclusion; the exclusion now seems to be temporary, and if it has any advantage, that is its advantage.

4015. Lord *Ashburton.*] The Native, at present, is excluded, not because he is a Native of India, but because he is not a covenanted servant; is not that the case?

Yes.

4016. If you were to allow the admission to the Judicial Bench of persons who were not covenanted servants, at the same time excluding the Native, you would thereby pass a stigma upon him as a Native; whereas, before, he was merely excluded as not being a covenanted servant?

Yes; he is now excluded upon a principle which applies to him in common with many highly qualified men; in the other case he would be excluded on a principle, that, call it what you like, he would certainly understand as being nothing more nor less than that which I consider the worst of all principles of exclusion, a national principle of exclusion.

4017. Lord *Broughton.*] The Native may think that the predominancy of the East India Company is not likely to last so long as the supremacy of England?

I should think he hopes to see the day when all exclusion will be at an end.

4018. What do you think of a suggestion which has been made by a person of considerable experience, that it would be advisable to make the English language the general language of the Company's Courts?

In the first place, so far as we are concerned on the Bengal side, I should say it was utterly impracticable. The time may possibly come for it, but it is so far distant in futurity, that I really cannot anticipate the period when you could introduce fairly and justly to the Natives in general the entire use of the English language in judicial proceedings.

4019. You think it is impracticable?

I think it is impracticable, because it would be quite unjust; I cannot anticipate the time when the suitors, or even when the Vakeels and Native Judges would be generally qualified to conduct all their proceedings in English.

4020. Lord *Elphinstone.*] Can you in any country, at any time, or under any circumstances, conceive of the use of a foreign language being possible in all Courts of Justice?

I think that it is a case which has perhaps never occurred in the world; the only parallel instance is that of the Roman Empire; we do not know exactly the extent to which the Latin language was used, but we do know that it was not generally used in the Eastern parts of the Empire; it was obliged to give way to the Greek language; and I think, after that example, there is not much chance of even the English language being able to pervade all India. Persian has always been the written language of the Mahomedans of India, as well of course as of Persia. It is, I believe, still used by them almost universally as a written language: if they correspond with each other it is in Persian; the spoken language is what is commonly called Hindostanee; the Mahomedans speak that as well as the Hindoos.

4021. Lord *Ashburton.*] Do the Natives who plead before the Courts commonly understand Persian?

The pleaders in the Sudder Dewanny Adawlut understood Persian in my time.

4022. Did the parties to the suit understand Persian?

No, a great many of them did not.

4023. Therefore, justice was administered in a language which was not understood by the parties?

Orally, it was always administered in Hindostanee.

N. B. E. Baillie, Esq.

14th April 1853.

4024. Lord *Broughton*.] Do you think it would be advisable to amalgamate the Sudder Dewanny Adawlut and the Queen's Supreme Courts in India?

I do not see that it would work well; the Court so formed would have two different kinds of duties to perform; it would have the English law to administer in the Supreme Court, and it would have the Mofussil law to administer in the Sudder Dewanny Adawlut. The Judges of the Sudder Dewanny Adawlut would, I believe, be quite useless in the Supreme Court; and there is so much work in the Sudder Dewanny Adawlut, that it would require the constant attendance of two Judges of the Supreme Court to take part in it. I do not think that even two Judges of the Supreme Court would add very much to the efficiency of the Court; and it appears to me that the addition of English Judges to the Judges of the Sudder Dewanny Adawlut would be likely to have a bad effect upon the minds of the Natives; I think it would be holding up the civil judicial service as not qualified for the business of the higher Courts.

4025. Would it be desirable to have such a Court as a Court of final appeal?

In the first place, I do not think that the practitioners generally in the Supreme Court, or the Natives who are suitors in that Court, would be satisfied if the appeal to the Privy Council were taken away. The Supreme Court is an excellent Court, and usually presided over by able lawyers, but we know from experience that its judgments have been sometimes reversed in the Privy Council; and therefore I think the Natives and the profession generally would not be satisfied if there was no ultimate appeal beyond Calcutta.

4026. Does not the character of the Judges of the Sudder Dewanny Adawlut stand high with the Natives?

During all the time I was in the Sudder Dewanny Adawlut, there were a great many very able men, and some who were less so; but I never heard any Native express anything like a suspicion of the honour of any of the Judges of the Sudder Dewanny Adawlut.

4027. Can a Vakeel become a Principal Sudder Ameen without being, in the first instance, a Moonsiff, and afterwards a Sudder Ameen?

The practice in the Native Judicial Service is for the Judges to commence with being Moonsiffs; from that office they are promoted to be Sudder Ameens, and then to be Principal Sudder Ameens; and no person can, according to the general practice, be admitted to the higher grades without going through the lower grades; therefore, in point of fact, very few Vakeels in good employment, in the Sudder Dewanny Adawlut particularly, would care to go into the Native Judicial Service.

4028. You do not know an instance of any Vakeel, of whatever character and estimation, who has been at once taken from the position of Vakeel and made a Principal Sudder Ameen?

It may have been done in the first instance; the two higher grades, I think, were created nearly about the same time; and it is likely it may have been so then; but since the service has been regularly constituted, I am not aware of any instance of a Vakeel having been promoted at once to any of the higher branches of the Native Judicial Service.

4029. Do not you think it would be highly desirable that the law in India should be administered much as it is in England; that is to say, that the Bench and the Bar should have that relative position towards each other, that from the Bar might be taken the most distinguished and best men to be put upon the Bench?

I think, at present, that principle ought to be adopted with regard to the Native Judges, and that the situations of Vakeel and Native Judge ought to be considered as branches of the same profession. At present, I do not think, with an exclusive service, you could go further.

4030. You gave the Committee an opinion yesterday with regard to the jury system; are the Committee to understand you to entertain a decisive objection to the general application of the jury system?

My objection to it is really this, that I do not see that it would be of much use; it is not always easy to distinguish law from fact in the cases which come before the Company's Courts; law and fact are very much mixed up together. The suits are more in the nature of equity suits than suits at common law; and in

such

N. B. E. Baillie, Esq.

15th April 1

such cases, I think, it would very frequently be difficult to make out an issue to send to a jury, the result of which the Judge would be able to apply to the remainder of the case.

4031. Many of the cases being of the nature of equity cases, it would not be so easy to apply the jury system to them as to the common law cases, to which the system is applicable in England?

Properly speaking, they are all equity cases; they are all conducted in the same way, and they are more like equity cases than common law cases.

4032. Yesterday you stated, that the stamp duties offered an obstruction to appeals; you did not then give any particular details to illustrate that fact; are you able now to give such details?

I stated generally, that the *ad valorem* stamp, which is the same upon an appeal as upon the institution of a suit, was an obstacle to an appeal; I think I stated generally, that it was about five per cent.; that was a mistake; it is only about five per cent. up to 300 rupees; after that, the rate diminishes till the value of the property in dispute comes up to a lac of rupees; the stamp is then 1,000 rupees, and on any amount above a lac of rupees it is 2,000 rupees. I adverted to that point, because I think that, on principle, there ought to be no obstacle whatever to appeals; that the door to appeal should be kept as wide open as possible. I think the right of appeal is given, not so much for the purpose of doing justice in the particular cause which is appealed, as for the effect it is likely to have upon the whole system; therefore, for that reason, and also because it is, I believe, the most effectual means we have of knowing whether the Natives are satisfied with the decisions or not, I think that the door to appeals should be kept as wide open as possible.

4033. Do not you think it would be advantageous to employ the junior civil servants in the Lower Judicial Departments, so as to give them the means of acquiring a knowledge of the Natives of the country and of their languages?

I think it would be of very considerable advantage, and that it would afford employment for the younger judicial servants, which, I believe, is a matter of great importance. I think that those objects might be advantageously combined with the measure which I suggested yesterday, which was the separation of a large mass of cases from the jurisdiction of the Moonsiffs for summary decision. All those cases which relate to debt might be entirely separated from the jurisdiction of the Moonsiffs, and reserved for summary decision without appeal; those cases are in their nature very easy; they may be entrusted, I think, to almost any person, so far as intellectual qualification goes, and all that is required is honesty for their disposal, and for their disposal without appeal, which I consider a matter of very great importance. I think that those cases might, with very good effect, be all transferred to the younger civilians, and that that would afford them the means of good practice, and also the best means of becoming acquainted with the Natives and with their language.

4034. You would separate the duties of the Moonsiffs, therefore, from all the rest of the judicial duties?

By that means I would take away a great many cases which are now decided in the regular way by the Moonsiffs; most of the Moonsiffs' cases might thus be gradually separated from their jurisdiction for the purpose of summary decision without appeal, and I think ultimately it might come to this, that none would be left except cases relating to land, which are frequently more difficult of decision; those cases might then be transferred to the Sudder Ameen, and in this manner the jurisdiction of the Moonsiffs might be entirely dispensed with, and the present Moonsiffs gradually promoted, as vacancies occurred, to the office of Sudder Ameen. I think that would be advantageous in another way; it would not only, as I have explained, provide for the summary decision of a large amount of cases without appeal, and likewise provide employment for the younger civilians, but it would also ultimately lead to the abolition of a number of petty jurisdictions; I think that such petty jurisdictions are in themselves a very great evil, not only on account of the Judges, but also on account of the number of officers connected with their Courts, including the Vakeels; it is with those Vakeels very often that the commencement of a suit originates, and unless they are well qualified, the suit will be wrongly brought; for all these reasons I think it is of importance that there

N. B. E. Baillie, Esq.

15th April 1853.

there should be no very small jurisdictions, and I would therefore ultimately abolish the jurisdiction of the Moonsiffs.

4035. Earl of *Harrowby.*] Could you obtain European officers in sufficient numbers to exercise those summary jurisdictions at convenient distances to the Natives?

That would depend upon the number of cases that were transferred to them; I think in the first instance all small debt cases might be transferred, and for those there are probably sufficient officers; I believe it has been stated in evidence that those cases, treated as regular suits, require on the average two months to dispose of them; I am satisfied that, treated as summary suits, two hours, upon the average, would be quite sufficient for their disposal; and therefore the immense mass of business which takes up so large a portion of the Moonsiff's time might be transacted by a European Judge, who could be trusted, in a very small period of time.

4036. Without the interposition of any Vakeel?

Yes; the parties appearing before the Judge as in the Courts of Request.

4037. Lord *Mont-Eagle.*] Would not that lead to a still futher exclusion of Natives from office?

The exclusion from an inferior office, while a better office is left open, can hardly be called an exclusion.

4038. There would be very few of the higher offices, but there are a great many of the lower?

Still I do not think that any office should be kept up for that purpose.

4039. *Chairman.*] Would you permit those young Europeans to act without the assistance of any of the Natives?

I think they might be trusted to act singly, without the assistance of any of the Natives; I allude to the small debt cases, which are cases of the simplest possible character, which any person who has a competent knowledge of the language in which the proceedings are carried on might decide.

4040. Do you think that persons should be appointed directly to those situations, or that they should have served first in a Collector's office?

If the business of a Collector's office is considered an easier kind of judicial business, then they might be well employed first under a Collector; but that is a question upon which I cannot speak very distinctly: my opinion is that a great portion of this business is so very easy that it might be disposed of by almost any person of good sense and common parts, provided he has a sufficient knowledge of the language.

4041. It would require, you think, no preliminary instruction or preparation for the performance of those duties other than a young man could obtain at college either in Calcutta or in England?

I do not think it would require any; I think a young civilian, educated as he would be, supposing him to have a competent knowledge of the language, would be quite qualified to dispose summarily of a great many small debt cases.

4042. Earl of *Harrowby.*] He would not be the worse, probably, for having received some little legal education in England before he went out?

He would be all the better for it; I believe they obtain that now to some extent; to what extent I cannot say.

4043. *Chairman.*] Do you think that the duties he would have to perform would be somewhat analogous to those of a Magistrate or a Justice of the Peace in this country?

Rather analogous to those of a Judge of the Court of Requests in India. There is a Court of Requests in Calcutta, which has a very large jurisdiction, up to 400 rupees, in cases of debt; persons were appointed to that Court without any particular previous qualification.

4044. Lord *Mont-Eagle.*] How do you propose that the Natives should receive any judicial training for the higher offices?

By being Vakeels.

M. [illegible], Esq.

15th April 1853.

4045. Now when a Native Vakeel is appointed to the office of Moonsiff, you must take him from the lower order of Vakeels?

Yes, the higher ones would not take the office, of course.

4046. Lord *Elphinstone*.] Would not a young civilian, if he were sent at once into the Moonsiff's Court, acquire a less favourable opinion of the Natives than if he were placed under the orders of a Collector, and so brought into contact with a better description of people than those who would generally appear before him in the Moonsiff's Court?

That is very likely; but still we must take mankind as they are, and I think that that which gives one a knowledge of the worst part of them is not to be dispensed with any more than that which gives one a knowledge of the best.

4047. Do you think it would be the best training for a young man who is afterwards to have a great number of Natives under his authority?

It does not appear to me that a Judge need be contaminated by the character of the suitors before him.

4048. Would not he be apt to imbibe an unfavourable opinion of the Natives generally, from only seeing the worst specimens of them in the Moonsiff's Court?

He might do that, but still I think, upon the whole, it is not in itself a disadvantage that he should be acquainted with the worst features of the Native character.

4049. Lord *Ashburton*.] The cases of debt you speak of may be very simple cases, and yet they may depend upon very complicated testimony. Is it possible that a European, totally ignorant of the manners, habits and modes of thinking of the Natives, can be a good judge of the value of their testimony?

I think he would soon become sufficiently acquainted with them, and it does not follow that he should be instantly appointed to situations of this kind. If it is thought an easier step that he should go into the office of a Collector, I see no objection to it; but it seems to me that he wants to acquire at some stage or other, before he is appointed to the situation of a Zillah Judge, which is that of a Judge of Appeal, some practical acquaintance with suits in the first instance. I do not think it necessary that he should commence with that, but I think that when he does commence to perform regular judicial business, this is the sort of business which is best suited for him, and he is suited to that business; and it is of great importance that a large amount of business should be summarily disposed of without appeal.

4050. Lord *Wynford*.] Are not you speaking of the same sort of business which is disposed of before one or more magistrates in this country?

Yes.

4051. Lord *Colchester*.] You stated that there was a Court of Requests at Calcutta; does that give general satisfaction?

The Court of Requests in Calcutta was originally a Court entirely of this kind; a Court of summary jurisdiction in debt, up to the extent of 400 rupees; I believe it gave the greatest possible satisfaction. The Court has since been enlarged, so as to include, in addition to cases of debt, cases of a more general character; whether it has given general satisfaction since that enlargement of the Court, I cannot say.

4052. What class of persons were the Judges of that Court?

One of them was a Native, and two of them were Englishmen; one of those Englishmen, I know, had been appointed to the situation as a very young man; I do not think he could have been above 20 at the time, and I believe he was always considered a very well qualified Judge.

4053. Were two Judges required to be present to act?

No, the Judges in the Court of Requests acted separately.

4054. *Chairman*.] Would you be inclined to pursue the same system with regard to those higher Judgeships, and appoint a Native Associate or Assessor to the European Judge?

I have not considered that question of combining a Native with a European; it might have a good effect; but I really cannot offer any decided opinion upon the subject.

4055. From

E. Baillie, Esq.

15th April 1853.

4055. From the observations you have made, the practice seems to have worked satisfactorily in the Small Debt Court in Calcutta?

The Native in the Small Debt Court in Calcutta cannot be said to have worked in conjunction with the others, because the Judges all sat separately. It was only when some case of particular difficulty occurred before any one of the Judges, that he was in the habit of consulting one of his colleagues; they therefore did not sit together.

4056. Practically, were they three Courts?

Yes.

4057. Hearing separate causes?

Yes.

4058. Lord *Mont-Eagle.*] Were there stamp duties in that Court?

No.

4059. Lord *Broughton.*] While engaged in your professional duties, have you had an opportunity of turning your attention to the Regulations which have been issued respecting land resumption in India within these last 20 or 30 years?

My practice in India was confined to the Sudder Dewanny Adawlut. I never had more than a very few cases in the Court of Special Commission. When I became the Government Pleader, I entirely refrained from any connexion with such cases, because the Government was a party, and they were not in the Court in which I had to advocate the interests of the Government. I have considered the Regulations a good deal, and to some extent since I returned to this country I have had occasion to refer to them.

4060. Have you ever published your opinions upon the system of land taxation in the Bengal Provinces?

I cannot say that I have published my opinions upon the subject of the resumption; I have written one small tract upon the land tax, which is in a great measure a translation from the Mahomedan law.

4061. Have you come to any conclusion with reference to the policy of the Resumption Regulations generally?

I think that, generally, the Government was quite entitled to resume all the land which it considered to be held illegally, without the payment of revenue. I do not entirely agree that the method in which the resumption was made was the best; I think it would have been better to have left the resumption to the ordinary course of justice.

4062. Earl of *Harrowby.*] By suits instituted in the name of the Government against the parties holding such lands?

By suits instituted in the name of the Government against the parties.

4063. Lord *Broughton.*] Do you happen to know whether that tenure, which is called the la-khiraj, is of a very ancient date in India?

I cannot find any traces of it in either the history or the law of India till a very recent period, I believe a little before our own time.

4064. Earl of *Harrowby.*] Will you explain what la-khiraj land is?

La-khiraj land is land held without being subject to the tax called "khiraj," which is commonly translated by "revenue" in India; that is, land held free from the payment of revenue.

4065. Lord *Broughton.*] You do not object, generally, to the Government resuming those possessions to which it appeared the holders had no real right, but you object to the mode in which that resumption has been frequently made?

Precisely so.

4066. And you think the resumption cases ought to be left, not to a commission appointed specially for that purpose, nor to any body of men specially appointed for the purpose, but to the ordinary tribunals of the country?

They should be tried like common suits.

4067. Have you anything further to suggest to the Committee upon the subject of the Judicial system in India?

It does not occur to me that I have anything to add to what I have stated.

4068. *Chairman.*] Do you think it would be desirable that parties who are being

educated

N. B. E. Baillie, Esq.

15th April 1853.

educated for the profession of the law should have some means offered to them of obtaining a knowledge of their profession?

I think it very desirable.

4069. Have they at this moment any such means?

They have no means that I am aware of.

4070. What is the book put into the hands of a candidate for the Moonsiff's office, to qualify him for an examination?

I think there are some Native abstracts of the Regulations, which he would probably study in attempting to qualify himself for the office.

4071. Is it necessary for him to have any knowledge of jurisprudence whatever?

No, not that I know of.

4072. Has he any means of acquiring a knowledge of jurisprudence?

Not that I am aware of. The only means which any person who is not acquainted with the English language may be said to have of acquiring a knowledge of jurisprudence are the means which the Mahomedans have in their Madrissas, where the Mahomedan law is taught, and I believe taught very well; that may be said to be jurisprudence to some extent. Beyond that, I do not know of any other means that there are for a Native to acquire any knowledge of jurisprudence.

4073. Does the Mahomedan law afford a better system of jurisprudence than any which can be collected from any English books with which you are acquainted?

I am partial to the Mahomedan law, but I cannot say so much as that; I think, upon the whole, there is much more of the wisdom of jurisprudence in the English law than in the Mahomedan law. The Mahomedan law is a very well-defined system, so far as it goes; very precise and generally very accurate in its definitions, and very rigid in the application of its principles, but it does not go to anything like the extent of the English law.

4074. Earl of *Harrowby*.] It does not meet so many cases?

It does not meet so many cases; the law merchant, for instance, I cannot say is included in it; there is no distinction between real and personal property; that is, perhaps, an advantage, however.

4075. Is there any law of partnership in the Mahomedan law?

There is.

4076. A law of principal and factor?

There is a law of principal and factor; the factor would be called a Vakeel; that is the origin of the name of Vakeel; it means an agent.

4077. Lord *Ashburton*.] Is the Mahomedan law more clear and satisfactory than the English law upon that subject?

I cannot venture to say so much as that. The English law contains a great deal of the wisdom of jurisprudence in it certainly; I think the Mahomedan law contains a good deal, but I would not venture to say that it contains so much as the English law.

4078. *Chairman*.] Are the mercantile transactions in Calcutta all carried on under the English law?

Entirely.

4079. Lord *Ashburton*.] From your knowledge of the Natives, should you say that they would prefer to have simple cases which may occur among them, such as cases of assault and of debt, decided by the Mahomedan Judge according to the old system, or by the Moonsiff of the present day?

I think at the present time they have hardly a correct idea of what a Mahomedan Judge might be. The Kazee was originally the Judge of the Mahomedan law, but under our system the Kazee is merely a name for two kinds of officers; one of those officers is, in fact, very like a notary; he is a person who makes contracts of marriage and other kinds of deeds: that is the ordinary Kazee of the Mofussil. The Kazee-ool-Koozzat, or the Kazee of Kazees, is the name given to the head of the Mahomedan law officers who resides in Calcutta.

N. B. E. Baillie,

14th April 1853.

4080. Would they prefer to have their cases decided by a Native who should hear the case orally and decide summarily upon the spur of the moment, or to have the case taken down in writing, with all the complications of English proceedings, as is the practice at present?

I think at present they would prefer to have things go on as they are: it may be that from a distrust of the Judge they would prefer a system which left a door of appeal open to them; but I do not think it follows that, if they had perfect confidence in the Judge, they would not prefer a summary mode of decision.

4081. Earl of *Ellenborough*.] If a merchant at Mirzapore consigns a quantity of cotton to a merchant at Calcutta, and a dispute arises between the consigner and the consignee, by what law is the dispute settled; by the English law in Calcutta where the consignee resides, or by the Mahomedan law of the consigner at Mirzapore; or is it decided partly by one law and partly by the other?

That question would very much depend upon the Court in which the case was tried; if it were tried in the Supreme Court, as it might be, the Supreme Court would decide according to the English law; if it were tried in the Mofussil Courts, they would decide, not by the Mahomedan, which would be inapplicable to such a case—this is just one of the cases for which there is no law—and it would be decided according to the notions of equity and good conscience of the Judge. Since your Lordship has alluded to that particular kind of case, I may mention one somewhat similar, which occurred within my own knowledge. A quantity of indigo seed was purchased by an indigo planter from a merchant at Mizapore; the seed was sent down by boats upon the river, and as the indigo planter got rather impatient, for the season was advancing, he sent boats to receive the seed, and in the process of transhipment the seed was lost. Then a suit was brought for the price of the seed; it led to very great embarrassment: on whom should the responsibility for the loss rest? According to the Civil Law, and I believe the English also, the risk is upon the purchaser. According to the Native ideas the responsibility was regulated by the fact of the delivery or non-delivery; there was a great deal of evidence therefore adduced on the one side to prove that the seed was delivered; that is, that the boatmen of one party had delivered it to the boatmen of the other party. There was a great deal of evidence on the other side to prove that it was not delivered; and then collateral questions were raised, questions which would not have occurred under either the Mahomedan or the Civil Law, but which were raised because no law was applicable to the case; I mean questions of custom. The person in the Lower Provinces adduced evidence to show that by custom the risk was upon the seller. The person in the Upper Provinces adduced evidence to show that by custom the risk was upon the purchaser.

4082. Where was the case tried?

It came by appeal to the Sudder Dewanny Adawlut at Calcutta. There could not be a stronger case to illustrate a great deal of what I fear I so imperfectly said yesterday, as to the uncertainty and sometimes the practical inconvenience which arises from the want of a settled law. Your Lordships will observe that in that case, if there had been the Mahomedan law, the question would only have been one of delivery or non-delivery; if there had been the Civil Law, there would have been no question at all as to whether the goods were delivered or not, but the risk would have been with the purchaser; but as there was no law at all, there was a variety of collateral questions raised; and the truth is, that there was no end to those questions, and there is no end to such questions in a great many cases which do occur; and those are just some of the practical inconveniences which arise from the want of a positive law in India.

4083. Lord *Monteagle* of Brandon.] You speak of that case rather as an illustration of a principle than as being a solitary case?

I give it in illustration of a principle; it is a solitary case upon that point; but questions of the kind were constantly occurring in my practice, questions in which I had sometimes to argue the original principles of sale, what constitutes a sale, for instance; and if I were to ask the question now of any man in India, he could not tell me what a sale is, or whether it implies any warranty of the thing sold or not.

4084. Earl of *Ellenborough*.] What is the law with regard to bills of exchange or hoondies?

The hoondie is an Indian document; but documents of the same kind were in

existence

N. B. E. Baillie, Esq.

15th April 1853.

existence under the Mahomedan law. There is no law particularly applicable to the case. The transaction was rather an irregular kind of transaction; but the hoondies are employed in trade in India in the same way as inland bills of exchange; and at Calcutta they are protested, and notices of protest given in the usual form, as if they were English bills of exchange. I am not aware that any case has arisen in the Mofussil Court upon them; but that is one of the points fruitful of a great deal of litigation and a great many difficulties.

4085. How would such a case as you have mentioned be dealt with at Benares?

I cannot answer your Lordship; I think the Judge would try in the best way he could to decide according to equity and good conscience. The rules of English law, which would probably be introduced into the case for the purpose of embarrasssing him, might embarrass him; but if he were a man of good sense, he would reject them, and decide according to his own notions of what was just.

4086. Then every Judge might decide the same point in a different way?

He might do so; that is another great inconvenience; that is another exemplification of the great difference of opinion which exists among the Judges. The best men, the men of the greatest talent in the service, sometimes cannot tell which way to decide a case, and when a case comes before them, they have no common standard, and, of course, each man takes his own particular view.

4087. *Chairman.*] Is there not uniformity of judgment obtained by the appeals?

Uniformity of judgment was formerly obtained by the concurrence of two Judges on the same point; now that uniformity of judgment is secured by the case being sent, in the first instance, to three.

4088. Earl of *Ellenborough.*] Are not the Judges frequently in the habit of deciding upon a technical point, so as to evade the merits of the question?

I am afraid there is a good deal of technicality, or rather there was a good deal of technicality in the Sudder Dewanny Adawlut, and inconvenience arose also from that cause; but I could not well say what the technicality was; each man seemed to have a technicality of his own, the most difficult of all technicalities to deal with.

4089. *Chairman.*] You stated that there might be several different decisions upon the same point by different Judges; would you think it desirable that there should be some Court of Appeal in India for the purpose of settling all those disputed points, so as to prevent discordant judgments being given in the different Courts?

I think no Court of Appeal could decide those points; they are points of law which must be previously settled by the law, in order to be justly decided afterwards. Suppose a question arises of warranty or not warranty, if it is determined for warranty, it may be unjust; if it is determined against warranty, it may be unjust, till the law has determined which is to be the rule. It appears to me that there are many cases that occur in which it is impossible to decide without having some previous rule of decision.

4090. Lord *Broughton.*] Have you the advantage of having reports of the decisions in the Courts?

There are very full reports of the decisions in all the Courts, even the lower Courts as well as the Sudder Dewanny Adawlut.

4091. Are they published?

They are; they are published very regularly, I understand.

4092. Earl of *Ellenborough.*] Do you think the want of a precise law as to hoondies has materially restricted their use?

I cannot venture to say that.

4093. In point of fact, they are used to a very small extent compared with the extent of the transactions of the country, are they not?

I think they are used as far as they are required for Native purposes.

4094. But not for Government purposes?

They are never used for Government purposes; the Government never remits money in that way.

4095. Can you assign any reason why the Government should not remit money in that manner, if it could do so safely, thereby avoiding all the expense and inconvenience of sending large escorts of troops with treasure from one end of the country to the other?

There is no objection to it, but I believe it has never been the practice of the Government in Calcutta to risk money upon mere personal security; where money is advanced, as it is in Calcutta, it is advanced upon bills of lading and documents as they are called, not merely upon personal security, which a hoondie would be.

4096. Do you think that the establishment of a fixed law with respect to hoondies would facilitate the operations of the Government in transmitting money from one part of the country to the other, and so avoid, to a certain degree, the necessity for sending parties with treasure?

I think that a fixed law for the particular transaction of hoondies would be one element in the larger question of whether the Government would be inclined to remit its money in that form or not; it would make the document better as a general means of transmitting money; but I do not think that of itself would be sufficient to induce the Government to remit money in that way.

4097. Lord *Elphinstone*.] Are not the hoondies, generally speaking, very scrupulously paid, and are not all transactions connected with them considered very binding?

The hoondie is very generally paid upon presentment in Calcutta; but I have known many instances in which hoondies were not paid; it is the common practice in attorneys' offices to treat them as bills of exchange; and there is a good deal of protest in consequence, as upon ordinary bills of exchange.

4098. Are not they generally a safe means of remitting money?

The hoondie is a safe means of remitting money if you are sure of the credit of the person upon whom it is drawn, and by whom it is drawn; I think that generally hoondies are not drawn, except by persons of good credit; but I do not think any general reasoning can be founded upon them as being always good, because I have known a great many instances in which they were required to be protested.

4099. They are considered in India as safe a means of remittance as bills drawn from one large town upon parties in another in Europe, are not they?

I should say so.

4100. Lord *Wynford*.] You were asked just now if there were any regular reports of the decisions of the Courts; you stated that there were; are there any digests and treatises upon the combined Mahomedan, Hindoo and Regulation Law?

There has been lately published in England a Digest of the Decisions of the Sudder Dewanny Adawlut and of the Privy Council upon Indian cases; that is the only general digest that I am aware of.

4101. Lord *Broughton*.] There is no digest of the Mofussil decisions?

No; I do not think it has gone beyond the Sudder Dewanny Adawlut.

4102. Earl of *Harrowby*.] Are there reports published in the newspapers as a matter of interesting information to the public?

I do not know what may be the case as to reports now; when I was in Calcutta the reports were confined to selected cases of the Sudder Dewanny Adawlut; at that time there were several reporters who selected cases, and after careful revision they were printed.

4103. Were those distributed through the country for the use and guidance of the inferior Judges?

I believe not; I rather think they were published like other books, and would be for sale.

4104. It was at the discretion of any Judge to possess himself of them?

Yes.

4105. You stated yesterday that you considered that the remuneration to the Vakeels was inadequate to secure the services of the best men to constitute a Bar; have you any suggestions to make as to any alteration in the present mode of remuneration,

N. B. E. Baillie, Esq.

15th April 1853.

remuneration, or the course which should be pursued for the purpose of obtaining a better Bar?

The remuneration is now fixed by agreement of the parties, but as I mentioned, it follows very generally the old rates; those rates are still retained for the purpose of regulating the costs which are allowed to a successful party; the successful party is allowed no more costs than the rate of fee, according to the old standard; that has very much the effect of keeping down the fees to the old standard, which is very trifling in minor cases.

4106. Earl of *Ellenborough.*] What income could a Vakeel make in good practice?

A man in first-rate practice might make 4,000 rupees a month, but that would be by securing much of the best practice, and it is the minor practice which I am alluding to; the Government has always been in the habit of paying fees according to the old standard; and in one of the cases in which I was employed the fee was seven annas and two pie, which, as your Lordship is aware, is under a shilling. In the heaviest cases which come into the Sudder Dewanny Adawlut, and those which give the most trouble, the fee is the least; I refer to cases of special appeal, in which there are two distinct records.

4107. *Chairman.*] Would you suggest that there should be a general alteration in the scale of fees to be paid to the Vakeels, or should it be left open to parties to secure the services of a Vakeel upon such terms as might be agreed on between themselves and him?

I think there should be no interference between the party and the Vakeel, but it should be left entirely to unrestricted agreement and competition; but I think reasonable costs should be given to the successful party; and if that were done in all cases, I think it would have a good effect in regulating the amount of fees generally.

4108. You think the consequence of the present state of things is, that parties are not able to command the services of the best men to establish a Bar in those Courts?

There are a few men who are sufficiently paid under the present system by engrossing all the higher class of cases; those men do not take the small cases; the small cases go to inferior men, and the effect is, the general inferiority of those Bars.

4109. Earl of *Ellenborough.*] Are there too many Vakeels for the quantity of business?

There are a good many Vakeels who have very little if any business at all.

4110. That must tend very much to reduce the fees, does not it?

I dare say it has that effect; but a good Vakeel is not much affected by it.

4111. *Chairman.*] With a view of selecting the Judges from the Vakeels, can you suggest any other method to be pursued for the purpose of securing greater respectability and greater efficiency in the Bar?

I think if the appointment of the Native Judges were made generally from the Vakeels, that of itself would have a very important effect in improving the general qualifications of the Vakeels, and it is to that I allude chiefly; I think it is of the greatest importance, where a professional agency is interposed between the Judge and the suitor, that the professional agency should be of as high a character as possible, and everything which can be done to secure the qualification of that professional agency should be done, for I look upon a Vakeel as being nearly as important in the administration of justice as the Judge himself: in point of fact, it is well known that the administration of justice in England depends much more, perhaps, upon the Attorneys and Barristers than it does upon the Judges.

4112. You think it is very important, for the purpose of obtaining such services, that the Government should be able to hold out prizes and rewards to them in the shape of appointments to the higher offices in the administration of justice?

Decidedly.

4113. Lord *Monteagle* of Brandon.] I understood you to suggest that a greater amount of legal education might be advantageously given?

Yes.

4114. Do you consider that that additional amount of professional education is capable of being given in the colleges at Calcutta by any increased development of their powers?

I think

N. B. E. Baillie, Esq.

15th April 1853.

I think a Professor of Law was appointed at the Hindoo College, but how he has succeeded I cannot say. My own opinion is, that the best course of legal education for the Natives would be, first, to give them a law, and then to require them to make themselves acquainted with it, and with all the laws they may be required to administer. I will take this opportunity, if your Lordships will permit me, to revert to a point which I alluded to yesterday, the exposition of the Native laws by law officers. I mentioned yesterday, that the Native opinion of those law officers, particularly of the Pundit, was very low. I think that the time has fully arrived when those officers might be dispensed with, and that every English Judge, at any rate, should be required to know the Hindoo law and the Mahomedan law, at least in all those cases in which he is required to administer them.

4115. Do you think that the existence of the stamp duties is injurious to the administration of justice?

That involves a question of revenue upon which I will not venture to offer an opinion. It also involves this question, whether the judicial establishments should be supported by the suitor in any way or not. That I think is a large question, which has no particular connexion with the administration of justice in any country. Upon that question I do not venture to offer an opinion. But it is known that the operation of the stamp duty upon appeals is an obstacle to appeals. I have already said that I consider the door should be kept as wide open as possible for appeals; and, therefore, though the institution stamp should be retained for the plaint in the first instance, it should be abolished certainly for appeal.

4116. Under the present system of stamp duties, apart from considerations as to the expediency of casting upon the suitor the expense of administering the law, are not those duties so imposed as to press with peculiar hardship upon the smaller and less important class of cases?

I think they must do so in this way. I believe the stamp upon petitions and all documents is the same in a smaller suit as it is for a greater suit, it presses therefore with greater weight upon the smaller case than upon the larger.

4117. Lord *Ashburton.*] At present the use of too low a stamp vitiates legal documents, does not it?

I think the rule is, that no Judge can receive a document which ought to have a stamp unless it is properly stamped.

4118. Would not it be a better mode to punish an offender by a fine, than to punish an offender against the fiscal regulations of the country, by vitiating the proceedings?

The only case to which it seems to me that could apply, would be where a document had an undue stamp upon it, or no stamp at all, and then there is the same remedy under the stamp laws of India as exists in this country; the document may be properly stamped upon payment of a certain increased duty. The Judge would reject it, telling the party you must get it stamped.

4119. Lord *Wynford.*] The suit would not be stopped, but the document might be carried to the Stamp Office and be afterwards restamped, upon payment of a fine?

If a document were offered to the Judge unduly stamped, I think he would return it to the party and tell him to get it stamped, and he would stay the proceedings till it was properly stamped.

4120. Earl of *Ellenborough.*] He would take another case and let that stand over, would he?

Of course he would do that.

4121. Can you produce any letter in evidence without the payment of a fee?

To my recollection letters are never stamped.

4122. Lord *Monteagle* of Brandon.] Is there not a stamp upon every document exhibited or given in evidence in the cause?

I cannot at this moment answer that question very distinctly.

4123. Earl of *Ellenborough.*] Is the stamp required in a suit of 1,000 rupees only twice what it is in a suit of 500 rupees?

The stamp upon a suit of 500 rupees would be 32 rupees, and the stamp upon a suit of 1,000 rupees would be 50 rupees.

N. B. E. Bai
Esq.

15th April 18

4124. The stamp duties vary materially at the different Presidencies, do not they?
That I am not aware of.

4125. Lord *Ashburton*.] Do you think Zemindars might be employed in the administration of justice in petty cases with advantage?
I think not.

4126. Earl of *Harrowby*.] You think they could not be trusted in the country districts with a power of summary jurisdiction?
I do not think they could.

4127. Are you aware that they do practically exercise jurisdiction among themselves?
I believe they do, but it is a jurisdiction of violence, I am afraid.

4128. You do not think it would be desirable to regulate that, and admit them under certain restrictions to exercise judicial functions?
No; I think, as a general principle, I would have no jurisdiction except that which proceeded from the authorities of the country; no hereditary Judges nor any private Judges of any kind.

4129. Supposing some of the principal gentry of the country were entrusted as in England with the functions of Justices of the Peace under a Commission from the Crown, would that be productive of advantage, in your opinion?
I do not think, at present, there are the elements for it in India.

4130. You do not think there is any educated class among the resident gentlemen of the country fit to be entrusted with such functions?
No; I should say that the country gentlemen, as they may be called, are less educated and less qualified for the performance of such duties than many of their dependents.

4131. Lord *Mont-Eagle*.] Do not you think that possibly such an employment being open to them might induce them to improve their education?
I cannot say that I think that alone would have that effect; perhaps, with other causes, it might induce them to improve their education.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday next,
Two o'clock.

Die Martis, 19° *Aprilis* 1853.

LORDS PRESENT:

The Lord President.	Lord Mont-Eagle.
Marquess of Salisbury.	Lord Colchester.
Earl of Albemarle.	Lord Wharncliffe.
Earl of Harrowby.	Lord Ashburton.
Earl of Ellenborough.	Lord Stanley of Alderley.
Lord Bishop of Oxford.	Lord Monteagle of Brandon.
Lord Elphinstone.	Lord Broughton.

THE LORD PRESIDENT in the Chair.

Rev. *A. Duff*, D.D.

19th April 1853.

THE REVEREND ALEXANDER DUFF, D.D., is called in, and examined as follows:

4132. *Chairman.*] WILL you be good enough to state to the Committee how long you have resided in India?

I went originally to India in the year 1829; I have resided there chiefly since, though I have been home once before this.

4133. In what capacity have you resided in India?

I originally went out as the first ordained minister of the Established Church of Scotland, being sent to India specially in connexion with the great enterprise of improving the moral and spiritual condition of the Natives—in short, as a Missionary.

4134. You have devoted yourself to the objects of that mission ever since?

Ever since. I may state that one great object which the Church of Scotland in this department had in view from the first, was to endeavour to institute means by which, as speedily as possible, Natives themselves might be raised up, who might be qualified to become teachers and preachers to their own countrymen. This involved therefore a considerable extent of educational apparatus, and various educational processes.

4135. From the position which you occupied, were you much thrown among the Natives, and did you obtain thereby a greater acquaintance with their character and feelings than perhaps some of those persons who were acting under the Company's Government could acquire?

Yes; I was continually, in fact, among them. The object of my life was to endeavour to secure their improvement in various ways, and therefore I was connected with most movements in Calcutta, which had in view alike their temporal and their mental and moral improvement; in this manner I was greatly mixed up with them in various ameliorative proceedings.

4136. With what parts of India are you best acquainted?

I am best acquainted with Bengal, though, in point of fact, I have visited many other parts of India; the Northern Provinces, as well as Scinde, and different parts of the Bombay and the Madras Presidencies.

4137. Have

Rev. A. Duff, D.D.

19th April 1853.

4137. Have you any knowledge of the Native languages?

With Bengalee, the vernacular language of Bengal, I am more especially acquainted.

4138. Can you give the Committee any general information as to the systems of law which are now administered in India?

There are, in fact, at this moment in Bengal four great systems of law which are regularly administered. When our Government assumed the Dewanny, as it is called, it was allowed to the Natives themselves to administer law just as they were wont to do, but endless corruption and confusion arose from this, and at last the Government was led to consider what it might do in the way of improvement. It was in the time of Warren Hastings that this resolution was taken, and I may state that it is on record that the great design was on the part of our Government then to administer the law generally to the Natives of India according to their own usages, but always with a distinct reservation expressed or understood, that it should be competent in some way or other for the sovereign power to modify or alter the provisions of those laws, according to circumstances. The words "as closely as possible," or some expressions of that kind, have generally been introduced, with reference to Native usages and institutions. At the same time there was a Supreme Court established in Calcutta, with a view of administering justice to British-born subjects and to all the Natives of India within the limits of Calcutta. This led on to the administration of purely English law to British-born and other European residents in Calcutta; and with respect to Natives, in matters of inheritance, contract, &c., the Mahomedan law to Mahomedans, and the Hindoo law to Hindoos. Beyond Calcutta the purpose was to administer the Hindoo law to Hindoos, and the Mahomedan law to Mahomedans, but subject to the rules, ordinances and regulations of the Supreme Government. It was always implied in connexion with those Regulations, that the Hindoo or Mahomedan law might be modified according to justice and equity. Hence arose a new system of law, compounded, as one might say, partly of the Hindoo and Mahomedan law, partly of original rules and ordinances, and partly of the modifications brought about in consequence of Government Regulations. This is the system of law which has been administered to the Natives beyond Calcutta, that is, to Hindoos and Mahomedans. On the other hand, no provision was made for other classes of British subjects there such as Jews and Armenians and East Indians; no law at all was instituted for them; in fact, they have hitherto been without law. The consequence has been, that in Calcutta the English law has been administered to them by the Supreme Court, and beyond Calcutta sometimes the Mahomedan law is administered, sometimes the Hindoo law, and sometimes the law of the country of which they may happen to be Natives; so that, in fact, they have been left wholly without any fixed law at all.

4139. What, in your opinion, would be the best way of putting an end to the confusion which has arisen from that cause?

Doubtless, the most direct and the most reasonable way would be, to institute at once a simple code of law, criminal as well as civil. There was an attempt made a good many years ago to improve the criminal law, and there was a code prepared which never has yet come into operation; but one simple code of criminal law might suffice, according to my impression, for all classes, provided it were sufficiently simple, with proper explanations. So as to the civil law, we have so many systems, that the great object should be to simplify and codify them. That could be done in India, or it could be done in London. The materials exist for its being done in either place, if properly qualified men were appointed.

4140. Would there be any difficulty in the translation of such a code?

It would very much depend upon the language into which the translation might be made. There would be some of the vernacular languages not so well adapted to such a translation as others. In the first instance, the language best adapted to it of all the vernaculars would be the Hindostanee, because that has been so much employed already in connexion with the law. At the same time, all the vernacular languages are in the course of being very greatly improved. Many translations have been made into them now of works of various descriptions, particularly of a religious kind. Grammars have been framed, and dictionaries have been published in them, so that they are all in course of improvement.

4141. Lord

Rev. A. Duff, D.D.

19th April 1853.

4141. Lord *Monteagle of Brandon*.] Are not the laws now, as they are passed, translated into the Oriental languages for the information of the people of the East?

The design was that they should be so translated. So far as I recollect, they are translated into the Bengalee language and into Hindoostanee; but beyond that, I am not prepared to testify.

4142. That being the case, and no difficulty being found in translating many single and independent laws, what difficulty would there be in translating a code of laws formed of those independent laws?

The difficulty would be pretty much the same in either case. What one would look forward to, is the fact that these languages are really now in a state of transition; and though they may not be, any of them, very perfect instruments as yet, they are in course of improvement, so that within a reasonable limit of years they may be fit for the expression of any ideas. They may now be considered as being relatively very much in the same state as the English language before the era of Elizabeth.

4143. Do you think that the use of the English language is advancing rapidly within the Presidency of Bengal among the Natives?

I should say, in the Presidency of Bengal, it is advancing with very great rapidity; particularly within the last 20 years it has done so. About the year 1816, the desire for the knowledge of English began to manifest itself, specially in Calcutta, and I should say, from that time, the taste for its acquisition has been spreading; indeed, every year the desire for it is increasing more and more, so that in any of the chief towns and villages of Bengal, if you were to plant an English school, you would immediately get it crowded with pupils, which is a sure indication of the growing prevalence of that desire.

4144. Do you consider that that extensive use of the English language among the Natives is beneficial?

I have no doubt that an acquaintance with the English language would be capable of operating most beneficially, provided, at the same time, we secured the means of proper moral and religious instruction to the Natives. I have no faith whatever in this, that a mere language, be it what it may, can operate beneficially apart from other considerations; but I have no doubt there is that in the English language which, if taught, would secure that very end.

4145. Excluding any moral effect which can be supposed to be produced upon the mind by a technical knowledge of the mechanism of language, must not a knowledge of the language which contains the best works both in morals and law and religion, be of the first importance to the people of India?

Most assuredly it ought to be so, and under proper management would be so.

4146. Earl of *Ellenborough*.] Do not you think it would be very advantageous to translate into the Indian languages some of the most valuable works in the English and in other European languages which it would be most desirable to make known to them?

Assuredly.

4147. That could be done without teaching them English?

Doubtless, that could be done without teaching them English.

4148. If we did that, we should then make our own choice of the books which they would read?

Yes; but as long as the British Government is there the paramount power there will of necessity be a demand for the knowledge of English, and that being so, it becomes us to provide for it in the best way possible.

4149. Did it ever occur to you to consider whether there were any means of giving a knowledge of the English language to Natives in the higher situations of life, most of the persons now educated at the schools, except, perhaps, at the Calcutta Presidency, being in an inferior condition in life?

There is this to be said for the people of India, that though out of Calcutta and the Presidencies, those who obtain a knowledge of the English language may not belong to the higher, monied, or proprietary classes, yet according to the notions of the people of India they cannot be said to be, most of them, of a low description. Caste is that which there marks out what is distinguished in honour

Rev. A. Duff, D.D.

19th April 1853.

and reputation; and I should say, decidedly, that in the English schools, even beyond the seats of Presidency, by far the great majority of the pupils are pupils out of those better castes and classes, who are high according to Indian notions, though not, perhaps, according to our English notions. Though it may not be the case that, in the interior, Zemindars and landed proprietors, or Rajahs and such like, are, to any great extent, seeking for a knowledge of English for their children, a large proportion of those who do acquire it are individuals of good caste and reputation among their own countrymen.

4150. Are not they very commonly servants employed about the cutcherries of the Magistrates and in public offices?

It is very natural that it should be so at present.

4151. Are not they of the lowest classes of society, generally speaking?

They are of all descriptions, I should say. There are Brahmins connected with the Courts as well as other Natives. As far as the Hindoos are concerned, those who hold offices about the Courts cannot be said usually to be of the lowest class, and in some parts of India, decidedly, the reverse is the case. I have seen, in the Madras Presidency, Natives of the lowest caste dealt with in such a manner that they are not allowed even to come into the Courts at all. Even when their evidence is taken, the oaths are administered to them outside.

4152. Did you ever see the school at Agra?

Yes.

4153. Do you know what is the class of boys who attend that school?

I have no doubt it is of a very mixed and miscellaneous character; and it is most natural that in the first instance the greater number of pupils attending such an institution should come from those official, mercantile, and other classes, that are the quickest in discerning how proficiency in English studies will promote them in life.

4154. How would you proceed for the purpose of inducing Rajahs and Zemindars, and people of real consequence in the country, to send their sons to an English school?

I am not aware, at this moment, that you could hold out anything in the form of a general inducement, which would operate alike in all places. A great deal would naturally depend on the personal influence of the English Judges and Magistrates, and other functionaries resident in the different localities. British officials have so much power in India, that if they were to speak kindly to the Natives, and endeavour to point out the advantages to them of a course of English study, they would be sure to prevail on a goodly number of them. In that way, there is no question a great deal might be done; but as to anything like a general or really efficacious system of influence for such a purpose, I do not know that in present circumstances anybody could organize it.

4155. Lord *Broughton.*] Are you aware that one of the proposals for encouraging the acquisition of the English language was, that it should be a test for holding certain offices?

I am quite aware of that; and in certain localities in India, such a proposal will act as a stimulus.

4156. Bishop of *Oxford.*] Did you mean to convey to the Committee, that in your opinion the result, for good or evil, of the acquisition by the Natives of the English language, would depend rather upon the use you led them to make of it, than upon the fact of their acquiring it?

Certainly; that is very much what I meant to say; and in reference to a previous question, of course I was speaking of India as a whole: there is no doubt but that in such places as Calcutta, Bombay and others, the inducement to acquire the English language held out by the Government in connexion with such acquisition being a passport to the holding of offices would be very powerful.

4157. Lord *Monteagle* of Brandon.] Are you aware of the order given by Lord Hardinge with respect to the qualifications in point of education to be required from persons who were candidates for employment in India?

I am aware of that order.

4158. During the period of your acquaintance with India, I presume you have seen

seen a considerable increase in the number of Natives who have been appointed to offices, and in the number of offices in which they were considered qualified to serve?

Certainly; I should say about the year 1829 the number of Natives in superior offices of trust and emolument could not be said to be anything at all; since then, owing to measures taken by Lord William Bentinck, they have been largely admitted to office; in fact, up to that time they were only occupying the very lowest and most menial offices in many respects; the only important office in name occupied by them was that of Native Commissioner or Moonsiff, but that office was of so low a grade, and so ill paid, and those who were appointed to it of so inferior a description, that it was in great disrepute among the Natives; so much so, that when Lord William Bentinck opened up this system of promotion connected with the Judicial Department, and appointed certain grades of Native officers, Moonsiffs and Sudder Amins, and Principal Sudder Amins, with increased salaries, at first the scheme did not work well, on this account, that there were scarcely any persons really fit to fill those offices; but by Lord William's successors the plan was followed out vigorously; they were rigorously watched and prudently encouraged, so that I should say by this time those Native Judges acquit themselves, for the most part, greatly to their own credit, and, I believe, much to the satisfaction of the Government.

4159. Do not you think that the extended employment of the Natives, under the authority of the Government of India, has a necessary tendency to augment their desire to understand English?

Doubtless, as far as that is concerned.

4160. And that tends to good?

It may tend to good.

4161. In what respect do you consider it could tend to evil?

That is a wide question; I should be obliged to go into some considerable explanation to answer it satisfactorily; I know young men in Calcutta who, having acquired a knowledge of the English language, and who from a certain natural amiability of character, and their contact with Europeans who take an interest in them, have been led into channels of thought and channels of right feeling which have landed them altogether on a very much higher platform of mind and thought and feeling than they otherwise could have occupied; but I know a great number of a contrary description, in regard to whom I cannot honestly say that their knowledge of English has improved them as men or members of society; it has no doubt given them a knowledge of something which they did not possess before; it has taught them something of European science, and mathematics and philosophy, and led them to read Bacon and Milton and Shakspeare, and various other authors, but at the same time I am bound to say that a large proportion of them do not appear to me to have improved in any way in their moral character; on the contrary, in many respects, thrown loose out of Hindooism, and out of the restraints of Hindooism, they have been tossed very much into a vortex of evil, which, if occasion called for, I could describe with some minuteness; it is that which made me qualify my answer. The knowledge of English is capable, I should say, of being turned to great good or to great evil, just according to the subjects taught and the use which is made of it.

4162. Is not such a danger common to Europe as well as to Asia; are there not many instances in which ill-regulated education in Europe leads to the same results which you have described?

Certainly; but I was answering the question put to me simply with regard to India.

4163. *Chairman.*] You have stated that you conceive the Natives have shown great aptitude for the Judicial office?

They have.

4164. What do you think are the principal deficiencies which they have also shown; are they defects in point of intelligence, or of moral feeling?

Speaking of the matter as regards their official character, the great defect hitherto of course has been that which arises from their want of proper legal training; no adequate provision having as yet been made for that; young men who are to be set aside for this Judicial office are called on to encounter a professional examination, but they are left to study according to their own will and choice;

Rev. A. Duff, D.D.

19th April 1853.

there is a book prescribed, which they must master, a book which embodies the Civil Regulations of the Government; they are examined upon those, and they are made to pass, I believe, a pretty rigorous examination; upon passing which examination, they receive certificates of fitness as regards their knowledge of the contents of that book; this is a vast improvement on the previous state of things; still there is no process by which their minds may be opened, and their views enlarged in connexion with the great principles of jurisprudence, the principles of equity, and the laws of evidence, and such like; all that which would open the mind and give it expansion and comprehensiveness of grasp, is wholly lacking in connexion with the special training of Natives for Judicial appointments. That has been the great deficiency hitherto, a deficiency which affects the intelligence, and indirectly the moral feelings; consequently, the great object would be to establish in Calcutta and other places, one or two permanent Law Lectureships, which could be attended by all parties who aspire to Judicial offices.

4165. Both by Natives and Europeans?

A great deal would depend upon whence the Europeans were to be appointed; if they are to be appointed as now from this country, surely in this country before they left, they might acquire a competent knowledge of those general principles which constitute the science of jurisprudence.

4166. Do you think that the peculiarities of the Native character and feelings are sufficiently considered in our legislation for India?

The great desire of the British Government all along has been to consult them as far as consisted with equity and reason; many of the peculiarities of the people of India are such that we, with our British and Christian feelings, could scarcely enter into them, or approvingly recognise them; but I should say that the predominant disposition has been to consult them as far as practicable.

4167. Are there any general complaints made by the Natives of changes in the law?

Of late there have been such complaints, and they have been embodied, I believe, in memorials addressed to the Government in this country, particularly with regard to the law of inheritance; there have been complaints that that law has been altered; with reference to that point, I would beg to state that my real conviction is that our Government has done nothing but what it was entirely warranted in doing according to the spirit of its own original voluntary engagements; its own original engagement, as far as we have a record of it, is what has been already indicated, that it would administer the Hindoo law to Hindoos, and the Mahomedan law to Mahomedans in all civil matters, such as inheritance, but reserving to itself always the right of making any such modifications or alterations as reason or equity might in the course of time, and with better knowledge, indicate to be necessary; in truth, when our Government assumed the administration of justice there, it was profoundly ignorant of what the Hindoo law was, or what the Hindoo usages were, and it never did, nor ever could commit itself to upholding everything, whether right or wrong; there was always a natural and proper reservation on the subject, expressed or understood. Accordingly, in point of fact, whether we look at the criminal law administered, which was the Mahomedan, or whether we look at the civil law, we find successive modifications in both to suit various rational purposes; for by the Act of Parliament the British Indian Government was empowered to make such rules, ordinances and regulations as should be deemed just and reasonable; clearly implying that these might be such as to modify the existing law if found to be not according to reason and equity; so even as to inheritance in some parts of India, the law has been materially altered long ago. You will find in the Northern Provinces one system of law (Mitakshura), and in the Bengal Provinces another (the Dayabhaga); and they are in many respects very dissimilar. In one of those systems it was an essential principle, that ancestral property could not be alienated at all without consulting the heirs, expressly including not only those who were born, but those who were yet unborn; and as this was utterly impossible, the inevitable conclusion was, that immovable property could not be alienated for any purpose whatever. In the face, however, of this stringent law, our Government, on account of its proved inequitableness, decreed by a Regulation of 1825, that Hindoo ancestral landed property should be saleable by public auction, in satisfaction of decrees of Court, not only for revenue due to Government, but even for private debts incurred by the occupants for the time being. So, in the year 1832, instructions went out from the Court of Directors, that an inquiry should be

made

Rev. A. Duff, D.D.

19th April 1853.

made into the effect of the law of inheritance with regard to those who might change their faith, where Hindoos became Mahomedans, or Mahomedans became Hindoos, or either of them became Christians. There were complaints of the effects of the Mahomedan and Hindoo law in such cases as depriving those who relinquished their faith of their property. Lord William Bentinck instituted an inquiry, and he went as far as his power enabled him to do at that time. It was before the last renewal of the Charter, when the legislative powers of the Governor-general in Council were comparatively limited. With regard to the Bengal Provinces he did alter the law, so that, upon the strength of that modification of the old law, any one changing his religion, whether Hindoo or Mahomedan, beyond the jurisdiction of the Supreme Court, Calcutta, need not necessarily forfeit his property. There were cases pointed out, and cases could now be given, if required, indicating that there were Natives who, under the operation of that old law, had forfeited their property, and had submitted to the forfeiture. Nothing else has been done till within the last three years upon that subject. That there was a call for something more being done must be obvious, inasmuch as the Natives in the Mofussil, or country districts, in point of fact, for nearly 20 years had enjoyed this liberty of conscience under that law, and inasmuch as the Supreme Court is supreme within the limits of Calcutta, and is bound to administer the Hindoo and the Mahomedan law to Hindoos and Mahomedans. This anomaly came to pass, that a Hindoo or a Mahomedan in Calcutta changing his faith would be compelled by a decree of the Supreme Court to forfeit his property; whereas if he were outside what is called the Mahratta Ditch, he would come under the operation of the Mofussil law, and would not forfeit his property. This law also did not extend to the Madras and Bombay Presidencies. The existence of these anomalies naturally led to a reconsideration of the whole subject, and in fact to the passing of that law which has recently been complained of, but which is in substance nothing more nor less than a republication and extension, in a new and improved form, of the law of Lord William Bentinck in the year 1832. That being the case, the British Government has only just acted out the course which it has pursued all along of modifying or altering or superseding the Hindoo law, according to its own view of what is equitable and right, so that there was no pledge broken, and no compact whatever violated. In reality, as regards the Hindoos, they least of all ought to complain here on this account; for when our Government assumed the administration of justice in Bengal, it is a fact that the Hindoos had, properly speaking, no law of their own at all. The Mahomedans for centuries had insisted upon administering the Mahomedan law in all criminal matters to the Hindoos, and the Mahomedan civil law to the Hindoos in all civil cases where a Mahomedan happened to be concerned. It was only in very minor civil cases in which Mahomedans had no share that they allowed them to consult a Hindoo Pundit. So that when our Government assumed the administration of justice in Bengal, the real historical order of the case is this, that our Government appeared in the attitude of benefactors towards them, and restored to the Hindoos that which they had not possessed for 600 years, namely, the right to be judged by their own law as far as it was found equitable. Instead, therefore, of depriving them of rights and liberties as far as they were concerned, our Government, without any compact or treaty whatsoever, spontaneously appeared as the restorers of the rights and privileges which they had lost under the Mahomedan sway. As to this being supposed to act injuriously upon them, I should state from my knowledge of some of the leading parties who have sent home certain petitions, that it did not well become them to complain of the British Government in this respect. Their own law as regards this particular matter is, that the loss of caste entails the forfeiture of inheritance, and a change of religion involves a loss of caste, and therefore a loss of inheritance. This, however, is but one out of the many causes which, according to their own sacred books or Shastras, lead to a loss of caste, and therefore to a loss of inheritance. Now, what we aver, and what some of the respectable Natives themselves have averred, at their own public meetings, is that, if their own law were to be rigorously applied to the Baboos or Native gentlemen of Calcutta, the great majority of those who signed the petitions would be found to be in reality out of caste, and therefore to have forfeited their property. So that if our Government took those petitioners at their word, and stringently applied to them their own law, they would deprive every one of them of their property to-morrow. That being the case, I simply feel that our Government has been not only warranted, but more than warranted in every way in adopting the course which it has done, and that it has acted kindly

Rev. *A. Duff*, D.D.

19th April 1853.

and generously towards the Natives in patiently hearing what they had to say, and then resolving to act according to its own sense of justice and equity. Moreover, as to this subject of inheritance, one other fact may be stated: property, so far as the Hindoos are concerned, is ordinarily held upon peculiar tenures; those tenures are particularly connected with what they call the sradh, or celebration of the funeral obsequies of their departed ancestors. All these obsequies are mixed up with endless idolatrous and superstitious observances. In Calcutta our Government is imparting to the Natives, with their own full consent, and even desire, a knowledge of European literature and science. This knowledge of European literature and science undoubtedly tears up Hindooism by the roots, as far as the faith of these educated people in it is concerned, so that a large body of these Natives have no longer any real faith in the fundamental principles and laws and usages connected with their own religious system; therefore, such individuals cannot conscientiously go through those idolatrous ceremonies any more, for in understanding and heart they despise them, and often profess openly to abjure them. Consequently, without the operation of some such new law as that recently complained of, they would fall into this cruel dilemma—either, in order to secure their inheritance, they must perform the prescribed idolatrous rites and ceremonies, and thereby do violence to their own enlightened reason and conscience, or else they must, if they are honest with reference to their own reason and conscience, forfeit their property. The time, therefore, I have no doubt is not far distant when this new law will be regarded by themselves as, in reality what it was fitted and designed to be, a great national deliverance and a boon to them.

4168. Lord *Wharncliffe.*] You said that the practice of the Mahomedan Government was to force the Mahomedan law upon the Hindoos in all cases where a Mahomedan was concerned?

In all civil cases where a Mahomedan was concerned.

4169. What is the rate of our law at the present moment where Mahomedans and Hindoos are concerned as parties in a cause?

The Courts generally take the law of the defendant.

4170. Earl of *Harrowby.*] Under the Mahomedan rule, did a Hindoo forfeit his property by becoming a Mahomedan?

I am not acquainted with an actual case of the kind.

4171. Was that the custom or the state of the law?

For aught I positively know, that might have been the custom.

4172. Did the Mahomedans permit the forfeiture of property by a Hindoo on his becoming a member of their faith?

I am not aware of any absolute law upon that subject.

4173. Was there a considerable conversion of the Hindoos to Mahomedanism upon or subsequent to the invasion of the Mahomedans?

Undoubtedly there were a great number of proselytisms.

4174. You do not know whether the property of the proselytes was forfeited in consequence?

I could never ascertain the actual fact with absolute certainty.

4175. Earl of *Ellenborough.*] Was not Mahomedanism extended rather by the circumstance of the Mahomedans taking the Hindoo women?

No doubt that operated to a great extent.

4176. Was it not extended by that means rather than by the conversion of the men?

As to conversion in any proper sense of the term, that is, in any sense implying rational intelligent conviction, I suppose it was very rare indeed. Unquestionably great numbers of Hindoos were either forced to become Mahomedans, or they yielded pliantly from self-interest.

4177. Earl of *Harrowby.*] The Mahomedans would hardly compel apostacy, and at the same time punish it, would they?

Certainly not, I should suppose both at once; but there was great inconsistency and extreme irregularity in the practices of their administration, judging from the characteristic spirit of Mahomedanism: the conclusion would be, that a proselyte would not be allowed to suffer the penalty of forfeiture demanded by Hindoo law.

But

Rev. A. Duff, D.D.

19th April 1853.

But what I meant in preceding answers to convey is, that as a matter of ascertained historical fact, I am not enabled to state what rule or practice was followed by the Mahomedans under the very peculiar circumstances of their Government in India; it probably varied according to the varying changes of circumstance.

4178. Earl of *Ellenborough.*] The Mahomedan Government was not generally a persecuting Government in India on matters of religion, was it; some of their first men as commanders of the army were Hindoos?

There were very great variations in that respect. Some of the Emperors were not only not persecutors, but highly tolerant; for instance, Akbar, he was far a-head of his age, and was even an example to European statesmen; but Aurungzebe, on the other hand, was a great persecutor. This led me to say, that there were very great variations in the practice of the Mahomedan rulers. In the case of Hyder Ali, he was a great persecutor; and so was his successor, Tippoo; in his time he used to seize the Hindoos by thousands, and administer the rite of Mahomedanism to them. On one occasion he subjected 60,000 poor Native professors of the Romish faith to the initiatory rite of Mahomedanism.

4179. *Chairman.*] Does it ever happen now, that there is a conversion of Hindoos to be Mahomedans, or of Mahomedans to be Hindoos?

I am not aware myself, personally, of any such cases; I should not, however, be surprised if there were occasional instances; though now the temptations and inducements are reciprocally very few.

4180. You stated that there was another class without law, namely, the East Indians; you mean the half-castes, do you not?

I mean those who are ordinarily known in this country under that designation, though they themselves, for very obvious reasons, dislike the appellation, partly as having no meaning, and partly as being somewhat insulting to them as a class.

4181. Earl of *Ellenborough.*] What name do they take, then?

They have had various names. Formerly, they sometimes assumed the name of Indo-British; sometimes that of Eurasians, a compound of Europe and Asia; but for many years past the name which they themselves have fixed on, and which those who do not desire gratuitously to wound or hurt their feelings would apply to them, is East Indians.

4182. *Chairman.*] Do you consider that they have any grievance besides that of having no law applicable to them?

They themselves have undoubtedly often felt that they have been injuriously treated; that is their intense impression, and I believe not without cause in many respects. They have been cut off very much from the sympathies of those whose duty it ought to have been to have cherished them; and they have been looked down upon and despised by others whose duty it was, I think, to have aided them in their struggles to raise themselves, so that in various ways they have had not a little to complain of.

4183. Are they looked down upon by the Natives as well as by the Europeans?

They are looked down upon undoubtedly, in one sense, by the Natives; the Natives are governed very much by feelings of caste. Even Europeans are unclean in the estimation of the Natives; the name for us is "Mlechas," or "unclean." We have no caste, so that we all stand pretty much in that respect on the same footing. With regard to the East Indians, one must further say, that though they have been thus looked down on and despised, they have unquestionably been making very great and laudable efforts to raise themselves and improve their own condition, and struggling too in the face of enormous difficulties. Having mingled very much with them, being drawn towards them by the very circumstance of their being so undeservedly cast down, and having noticed their earnest struggles, my impression is, that they have to a great extent given satisfaction in the discharge of various important duties connected with the Revenue, the Judicial Department of the Government and in the public offices; I have heard them very highly spoken of by those under whom they were placed. There was one Governor in India, Lord Metcalfe, who knew and appreciated them, and who was pre-eminently their friend and benefactor. If I were permitted to read one extract from his judgment with regard to them, I believe it might go very far to settle the point as to their general character and position. From the estimate of this distinguished statesman, it will appear that they occupy a position in India, being Christians in name, and many of them in reality, and closely connected with the Europeans, which may give them a very commanding amount of influence in regard to the Natives of India generally. Lord Metcalfe, in a reply of his to an address which they delivered on the occasion, I believe, of his leaving Calcutta, says, "That you should be considered, or consider yourselves, as a separate class is greatly to be lamented; not less is it so, that there should be any distinctions or separations of any kind in this empire. It must be the anxious wish of every man connected with India, that all classes, Native, East Indian and European, should be united in one bond of brotherly love. If any feelings, too natural to be wondered at, caused by the dominion of foreigners, or difference of religious customs, manners and education, render this union at present difficult or unattainable, with respect to our Native brethren, we can only hope that such difficulties may in time be surmounted by good government and the enjoyment of equal rights. But there is no reason why East Indians and Europeans, if equal justice be dealt to both, should not be joined in the most cordial union, or why any distinction between them should even exist. But if your community, gentlemen, were to be regarded as separate, it is one of which you have much reason to be proud. Judging from what has come under my own observation, I am not aware of any community in which there is more respectability of character or less apparently of crime or unworthy conduct. In official ability and efficiency you yield to none; and in all pursuits and professions, in arts and in arms, you have representatives of whom every community might justly boast. You have an extensive share in the public business connected with the administration of the Government of this country; and the acknowledgment of the value of your co-operation has long been established, is daily increasing, and cannot fail eventually to produce for you important and beneficial results."

4184. Is their number very great?

I should say there are about 20,000 in the Bengal Presidency. In Calcutta, I should think there may be about 2,000 who are variously employed in the Government offices, and in following different, useful and honourable trades and professions.

4185. Lord *Elphinstone.*] Do you include in that number the descendants of the Portuguese?

The truth is, it is a very difficult matter often to distinguish the one from the other, because they do become again intermixed: but there may be some of Portuguese descent, who stand aloof and separate from them, and who may not be usually included in this designation, though, as I have said, the line of demarcation is not well drawn.

4186. Do you include them in the number you have stated?

If the question applies to those who have in them Portuguese and Native blood, I include all.

4187. Are not the half-castes very much employed in the public offices?

Of late years they have been getting more into the public offices, as well as into higher posts there, and their condition has been altogether a rising condition; but it must not be forgotten that the great bulk of them for years gone by, till very recently, were greatly cast down and degraded, alike in the estimation of Europeans and of Natives; so that they were in danger of losing all self-respect, and becoming weary of life, and not caring what became of themselves. That, I believe, was their position, in the main, till within a comparatively recent period.

4188. Lord *Monteagle* of Brandon.] What date would you fix upon as the period of the change?

I cannot fix upon any precise period for the change.

4189. Was it subsequent to the passing of the last Charter Act?

Even before that there were individuals admitted into under situations in the public offices.

4190. Earl of *Ellenborough.*] Was there ever any person among them, besides Colonel Skinner, who could be said to be distinguished in arms?

No one so distinguished that I know of, though there were some others of considerable note.

4191.

4191. Lord *Wharncliffe.*] Should you say that there is now much difference in the estimation in which those persons are held by the Natives, as compared with their estimation of Europeans, supposing them to be in the same position in society?

That would vary exceedingly. There is no single assertion which can be made which would include all the variety of cases. A great deal would depend upon the character of the individual. There are undoubtedly at this moment individual East Indians in Calcutta who have, by their good conduct and personal influence, raised themselves in the estimation of the Natives; so that the Natives regard them very much as they would regard Europeans. A great deal would depend upon the individuals themselves.

4192. Is not the residence of the East Indians very much confined to the Presidencies?

The great bulk of them is to be found there.

4193. Earl of *Ellenborough.*] Are not the bands of Native regiments composed of East Indians?

They are, to a great extent.

4194. Lord *Wharncliffe.*] Do the East Indians hold many civil appointments in the Mofussil?

There is a proportion of them so engaged, though as yet they have been excluded from the highest offices of trust and emolument occupied by the covenanted civil service. I think there may be seven or eight of them who are Principal Sudder Amins, and five or six who are Amins, and as many Moonsiffs, with a few Deputy Magistrates and Deputy Collectors.

4195. In those cases, can you say whether they are held in the same estimation as judicial officers, as the Natives who hold similar offices?

As far as I have observed, when they do conduct themselves with propriety, they are so. I have seen certain instances in which they stood very high in the estimation of the Natives; but, generally speaking, throughout the interior they do not abound much, it is chiefly in the great towns they are to be met with.

4196. Lord *Elphinstone.*] From your experience in the schools, what opinion have you formed of the capacity and character of the East Indians, as compared with the Natives?

I should say that you would find a fair proportion of East Indians who indicated as much capacity as the Hindoos or Mahomedans usually do. Among the Hindoos and Mahomedans there is a prodigious difference in capacity, according to the caste and class to which they belong. You will find the lower castes and classes, with few exceptions, exceedingly degraded, mentally as well as otherwise; many of them are very obtuse. It is different as to the higher and better classes; because hereditarily they have had to do with certain offices or branches of learning which quicken their mental faculties, and give exercise and scope to their natural capacities. If you were to compare the East Indians, as a body, with those higher classes of Hindoos, I do not think the comparison would be a fair one. You might say, undoubtedly, in that case, that there was a larger amount of capacity among the Hindoos; but if you take the Hindoos as a body, high and low together, which I think to be the fair way of drawing the comparison, you will find as large a proportion, relatively to their numbers, among the East Indians indicating capacity as among the Hindoos.

4197. Earl of *Ellenborough.*] Do not you think them inferior in personal appearance, and in point of stature and strength, to the Natives?

That is partly a matter of judgment, and partly of taste and feeling. Generally speaking, I believe that is the prevalent impression with regard to them; but, at the same time, it must be owned that while there are inferior as well as superior races of Hindoos, there are among the East Indians men of stature and strength, and altogether of commanding personal appearance.

4198. Lord *Elphinstone.*] In the schools, do you think their dispositions and characters are better or worse than those of the Native boys?

It is very difficult to give one comprehensive answer to that question. Generally speaking, I should say, from their training and education as Christians, they exhibit on the whole a higher style of character.

4199. Earl of *Ellenborough.*] They have had, from the circumstance of their birth, higher advantages than the Natives have had, have they not?

A considerable proportion of them have had higher advantages; but it must be owned, likewise, that a large proportion of them have had no advantages, having been neglected by their European parents.

4200. Earl of *Harrowby.*] In what religious faith are the East Indians usually brought up?

Nominally and professedly they are almost all Christians.

4201. Christians of what particular persuasion?

They are partly connected with the Roman Catholic Church, and partly with various denominations of Protestants.

4202. Where they are in connexion with the Roman Catholic Church, do they become so in consequence of their parents being of that persuasion?

Those connected with the Roman Catholic Church, as far as I ever saw, are chiefly those of Portuguese descent.

4203. *Chairman.*] What appear to you to be the principal imperfections of the judicial system in India; will you first state your opinion respecting the system of appeals, and the mode of taking evidence?

Formerly those appeals have been exceedingly numerous and complicated; they have produced a great deal of confusion, and have led, in fact, to a great deal of encouragement of what was wrong in every way. At one time there were wont to be appeals up through the whole series of Courts, from the lowest till they ended in the highest Court, and the higher Courts had to decide wholly from the written records, without the evidence of living witnesses at all. Now there is a limitation in that respect both in the Civil and the Criminal Departments, which is a great improvement upon the system which previously existed. Formerly, from the decision of a Moonsiff there was an appeal to his superior, and from him again to his superior, and the case might go up to the Sudder or to the Supreme Court. The same took place in other departments. This process, however, has been greatly abbreviated; of late years there has been but one appeal allowed upon the merits of a case, with a second appeal upon the application of the law if required; so that though still the number of appeals is much greater than is consistent with cheap and speedy justice, there has been a marked improvement. The only effectual way of getting rid of those endless appeals in trivial as well as important cases would be to get rid of their necessitating cause. The alleged cause always was the imperfections of the system as a whole, the endless falsifications introduced into the written depositions or evidence of witnesses as taken down by the Native subordinate officials, and still more the inefficiency or inaptitude of many of the administrators of the system. There seldom was any certainty whether a cause might be decided rightly or wrongly; and on this account a door was always left open for appeal. The way to rectify that would be, of course, to secure an improved system of law and procedure, with really qualified men, alike Europeans and Natives. Natives of a higher order, as I have already stated, have been appointed; and I have no doubt that every year there will be a progressive advancement in that respect, or that the necessity for appeals will diminish, and in many cases may cease altogether. As regards Europeans, their comparative ignorance of the language was wont to be a great drawback, though there were some distinguished exceptions. Persian having been the law language of the Mahomedans, it was taken up as our law language, and it laboured under this disadvantage, that it was not the vernacular tongue either of the Judges who administered the law, or of the parties who sought for justice; it was foreign to both. In the year 1837, a great change took place under Lord Auckland's administration, when it was decreed that the vernacular should be the language of the Courts of Original Jurisdiction in all the provinces; for instance, in Bengal, Bengalee; in Behar, Hindostanee; in Orissa, the Uriya; in the Tenasserim Provinces, the Burmese. The language of record was appointed to be Hindostanee, as being that with which most parties were best acquainted; it became the language of the Court of Appeal in Calcutta, though still it is to the great bulk of the inhabitants of Bengal a foreign language, as it is to the Judges. The question therefore has been raised and discussed repeatedly, and there are differences of judgment about it, whether the language of pleading in the Supreme Court ought not to be English, seeing that that is the language which the Judges understand and speak best; that, it has

Rev. A. Duff, D.D.

19th April 1853.

been ably urged, should be the language of the Court. Such a change might also be attended with another very obvious advantage. It is, of course, desirable to obtain a more highly qualified class of Native Judges than those now procurable. The complaint has been that they have had no proper professional training. Now if a law lectureship were established, so as to give them a knowledge of the general principles of law, and if then it were ordained that they should go and practise in the Courts in Calcutta, such as the Supreme Court of Appeal, as well as the Zillah Courts in the neighbourhood, and thereby become practically acquainted with the applications of law, the modes of procedure, and the ways of taking and sifting evidence, that would be an effectual means of training for them, and would prepare them ultimately to occupy the seat of judgment themselves. Something of this kind also might be ordained now with respect to Europeans who go out from this country. Some have thought that English Barristers might be at once appointed as Judges, to administer justice even in the Zillah Courts in the English [illegible] The adoption of such a course would utterly ruin the whole business in my opinion; it would never do at all. The vernacular unquestionably there ought to be the language in which the proceedings should be carried on. The qualification of European Judges for administering the law properly, should include a really competent knowledge of the vernacular; and to this, of late, much greater attention has happily been shown. If they are to be sent from this country young, as they ought to be if they go at all, during the time they are mastering the Native language in Calcutta, or other Presidency seats, they might surely be employed in attending the different Courts there. When medical men are sent out to India from this country, they are sent to the Native hospital to learn the peculiar diseases, or modifications of disease, to be met with in that country, and the peculiar applications of medicine thereto. So common sense would say, that men sent out from this country, possessing no practical knowledge of Indian law and procedure, ought to be sent to the Supreme Court of Appeal there, as well as to the Zillah Courts in the neighbourhood, and to the Police Courts in Calcutta, to notice what was going on, and to be examined with respect to it. With regard to the Native language, to the mere abstract examination in book knowledge, there might be advantageously superadded an examination in practical knowledge. It might be said to them, "Here are persons pleading before the Court; go and give the substance of what passes, and thus show that you understand it." If there were a system of that kind established for European officers, who were afterwards to become Judges, or Collectors, or Magistrates, it would be a real training for them, and would fit them for the varied functions which they would have to discharge; and I may say, also, that having been out there, and noticed the operation of things, I have no sympathy at all with those who insist upon it, that at once and from the very beginning, there should be an entire separation between the revenue, the magisterial and the judicial departments. I will state my reason for that, simply as having observed the existing state of things; I believe that in this country such separation might be a wise measure; but it must be remembered that in India we are foreigners; a mere abstract knowledge of the law is but one-half of the requisite qualification; the second half, and the chief half, after all, is a thorough and intimate knowledge of the Natives, and their ways of thinking and acting: a man transferred at once to the Bench of Justice, whether from this country or from a scholastic establishment in Calcutta, would fail utterly, because from ignorance, or want of practical knowledge, he would be everlastingly in the hands of the Native officers of his Court; and in spite of himself, he would be entrammelled and entangled, and baffled and thwarted in every way; therefore, one would say, knowing the state of things, that it was a mighty advantage for a man first to have the means of acquiring a general knowledge of the law, and becoming acquainted with its established principles; and then, instead of wasting time, as many heretofore have done, in follies and frivolities, having nothing to do but to learn the language from books, why not insist upon their going to the Courts to acquire the practical knowledge, alike of language and of law, to be obtained there? Again, the transference of a man to the Bench of Justice at once, ignorant as he must be of Native habitudes of thought and action, must lead to many of the evil results which I have already indicated; whereas, if he were to be sent out in whatever capacity, whether as assistant to a Collector, or to a Magistrate, it would bring him into close and immediate contact with all classes of the Natives in a thousand ways; and in a few years he would become quite one with them, as to his familiar acquaintance with

Rev. A. Duff, D.D.

19th April 1853.

with their modes of thinking and acting; so that by and by, when he was promoted to the Bench, he would sit there with a full knowledge of everything which it was important or necessary for him to know.

4204. Lord *Monteagle* of Brandon.] You would adopt the general principle of Sir Thomas Monro's statement, which evidently points out the Revenue Department as affording a good training for young judicial servants?

Yes; and my reason is what I have stated, that whether he were appointed in the first instance to a revenue situation, or as assistant to an ordinary Magistrate, it would bring him into intimate and most beneficial contact with the Natives; contact which, with the lessons of experience thence accruing, would prove of unspeakable advantage when in the subsequent discharge of judicial functions.

4205. Would you carry your views so far as not only to make the Revenue Department a place of training for a future Judge, but, after he had become a Judge, and had for years exercised judicial functions, would you approve of his being transferred to the Revenue Department, or, after he had been for many years exercising revenue functions, and was advanced in life, would you approve of his being transferred to the judicial Bench?

If he had been so long connected with the Revenue Department as that he was physically or mentally incapacitated, it would not be a wise thing to transfer him; nor would I transfer him at all to the judicial Bench, unless he had indicated the possession of real qualifications for the office.

4206. Do you approve of or defend the principle of young men being appointed to occupy judicial offices in a Court of Appeal before they have had any experience in a subordinate Court of the First Instance?

As a general principle, I should not, certainly, approve of or defend any such course.

4207. *Chairman.*] Do you think that the Indian judicial system requires any great organic changes, or that it can be gradually improved without them?

My impression is, that there are no real organic or radical changes required; but I think that the system is still capable of much improvement. There have been many decided improvements already made indicative of what may yet further be expected. The whole system has, of late years, been ameliorated step by step, and perhaps relatively as rapidly as the judicial system in England has. Of this one or two illustrations may be furnished. Formerly the Sessions Judge was wont to go round and hold circuits and gaol deliveries twice a year: this led to considerable abuses. The length of time they might be detained as witnesses led numbers of the Natives to hold back and prevaricate, and refuse to give any information. Next, sessions were held four times a year; and now the Civil Judge has been made Session Judge, and ordered to hold a gaol delivery every month; and this has been a very great improvement. Formerly there was a union of offices, not always of the best kind; formerly the offices of Civil Judge and Magistrate were united; now they are separated. The Commissioner of Revenue, at one time, was also a Magistrate; he is now relieved from magisterial duties. Even now, however, there are certain unions which might be dissolved with advantage. The Magistrate still holds a judicial office; he inflicts punishments up to three years' imprisonment; and this union certainly, on general principles, is not desirable. A Magistrate should be just the head of the police, and should not himself have an interest in the conviction of those who are brought up for judgment; the two offices should be entirely separate. In that case, the better plan would be, apparently, judging of it upon general grounds, and looking to the present working of it, for the police to remain as a police, and for the judicial department to be separated from the magistracy or the police department, so that, in this respect, all judicial functions should be in the hands of Natives or Europeans, sitting as Criminal or Civil Judges, and the entire duty of keeping the peace and bringing up offenders in the department of the police. I believe the entire separation of those offices would answer a good purpose. Then, also, there have been at times various combinations of the Collectorship with the Magistracy. In Bengal, again, those offices have been gradually separated with good effect, and much to the advantage of the service. Still, even there, there are suits connected with rent which are decided by the Collector that might more properly fall into the hands of the Civil Judge. The average duration of suits in the different Courts has of late years been reduced to less than half or third part of the time formerly occupied. Those are some of the

the improvements which, at a glance, naturally present themselves; and, seeing that so much has been done already, the impression is left that what is wanted is, not a series of organic changes, but of wisely reformative measures.

Rev. *A. Duff*, D.D.

19th April 1853.

4208. A Collector in Bengal has less difficult duties to perform than a Collector elsewhere, has not he?

A Collector in Bengal has very heavy duties to perform, though, of course, he has not the same multitude of minute cases to settle that a Collector in the Madras Presidency has to deal with under the ryotwar system. Still, in Bengal, he is charged with the sales of estates for arrears of rent, and with the administration of the estates of minors; he has to deal with the equitable division of the estates of the Natives among co-heirs, and to dispose of some thousands of summary suits annually; and all this involves very heavy duties.

4209. Lord *Monteagle* of Brandon.] Do you consider that in the various Courts, high and low, it is of importance, if possible, to bring the European to act on the same Bench and in concurrence with the Native, so as to unite the local knowledge of the one and the high education of the other?

Hitherto, from the broad line of demarcation between them, there have been, of course, alienations of feeling, which would have made that rather difficult; and there may be such feelings still; but I am convinced that, under the processes of education which are now being carried on, the Natives are acquiring a great deal of knowledge of European ways of thinking and feeling, and such an alliance as that now referred to might be much more easily brought about at present than it could have been formerly. As the process of assimilation advances, the facilities for kindly co-operation will increase.

4210. Do not you think that that system would have a tendency to afford to a young European who was prosecuting his studies for the judicial service the best species of judicial training?

I have no doubt of it, if properly managed.

4211. The Committee have received several expressions of opinion in favour of a union between the Sudder Adawlut Court and the Supreme Court; what would be your opinion upon the subject of thus uniting the Queen's Judges and the Company's Judges?

I should say, if we had, what is most desirable, one code of law, civil and criminal, for all India, then that union could be brought about with the utmost advantage to all parties.

4212. Earl of *Ellenborough*.] Do you think that a Native Judge, sitting by the side of a European Judge who knew his business, would ever have an opinion of his own?

I think, under the old system, when the Natives really were fawning and flattering and servile beyond the power of language to express, it would have been very hard to say that they ever would have an opinion of their own; but I am satisfied that a new race of Natives is now rising up in connexion with our processes of education, who decidedly would have an opinion of their own. I have no doubt that a fair proportion of them would be found of this description, and probably the tendency, in some instances, would be to have rather too strong an opinion of their own.

4213. Lord *Broughton*.] Would they look down upon the European, do you mean?

Not exactly look down upon him; I did not wish to be understood as conveying that impression in answer to the question; my meaning is, that the Native would often show that he could think for himself, and perhaps would sometimes exhibit a certain spirit of independence, purposely to show that he could think for himself. In further answer to a previous question, it may be stated, that even now it is optional with a Zillah Judge to call in Native Assessors to assist him in difficult cases, and this has been done in some instances with great advantage. In other cases the European Judge would not do so, because, hitherto, it has been very much a matter of personal feeling; but there have been instances in which a European Judge has called in respectable Natives to his assistance, and constituted them Assessors; and in this way they have co-operated with great harmony, and to a good purpose. If it came to be understood that it was the wish of the Supreme Government that such a course should be generally adopted, I have no doubt that within

Rev. A. Duff, D.D.

19th April 1853.

within a reasonable time a great deal might be accomplished in this way. I may further add, in connexion with this point, that it would have this advantage: at the time of our assuming the administration of justice, the Native Zemindars who were armed with police or magisterial powers, were entirely broken down in that respect, and deprived of their authority. They naturally felt this very much, as they were thereby humiliated in the eyes of their dependents; and the change tended to drive them into various lawless courses; but now, if there were bestowed upon the most deserving of them some dignifying title, such as "Honorary Justices," or something of that description, something which would honourably mark them out, and give them distinction in the estimation of all around, it would make them feel that they were again confided in by the Government, and they would then be found much more ready to co-operate effectually with the British authorities; and the time would come when every where, by a course of kindly and considerate cherishing, a sufficient number of persons worthy of trust and honour might be found. If any plan of that sort were adopted, which it might easily be, for it has been already substantially acted on in certain places, it might answer also another important practical object. Many have urged strongly the desirableness of having a Legislative Council or at least a Consultative Council in India, into which Natives might be admitted. I must say that the Natives do at times, not unnaturally or unreasonably, feel it to be a grievance that laws are passed affecting their interest, without their being sufficiently consulted upon them; yet it ought to be at the same time stated, that these are at present limited very much to a certain class. Looking at India as a whole, probably 99 in a hundred of the inhabitants never think nor care about the subject at all. But if this system were adopted of having throughout the country men singled out as Honorary Justices, because they have distinguished themselves by their good behaviour, or by rendering valuable assistance to the Government, they would be inspired with the elevating sentiment of self-respect. And were they fairly put upon their honour in this way, I believe they are capable of doing good things and great things. Now, at present, when a law is to be enacted, it is merely drafted, and published in the Government Gazette three months before it is finally passed; well, instead of this abrupt and summary process, the draft Act might be sent to all the Zillah Judges, and they might be asked to call together their Native Assessors, read the draft Act to them, consult together, get them to make their remarks, and draw up a compendious digest of their views upon the subject. Such digests from the different Zillahs might then be forwarded to the Secretary at head quarters, for the purpose of having them collated, and gathering up their results. In this way, the Government, without summoning a general Legislative or Consultative Council to Calcutta—the time for which I do not think has yet come—might obtain the judgment of Natives of weight and character throughout the country; and when it was known that in such ways the Government had really consulted the most worthy, it ought greatly to abate, if not take away every reasonable ground of grievance, until the progress of events safely warranted still greater changes.

4214. Earl of *Ellenborough.*] Would not it be a much safer course for us, in our position, by showing consideration to the Zemindars, the Native gentlemen of India, and to persons of property and distinction in the country, by giving them these honorary distinctions, to induce them to give their co-operation to the Government, than to attempt to raise up an educated class from an inferior condition in society, for the purpose of filling those offices; and further, has not our practice, of late years, been materially changed in this respect, that there was, in former times, a much greater disposition to show consideration to persons of property and natural authority in the country than there has been of late?

With regard to the relative amount of that disposition in former years, and at present, I am not prepared positively to express an opinion. But it must be remembered, that although the classes which are being educated, and who obtain those offices, may not usually belong to the higher classes, as we should call them, yet, being of good caste, that with the Natives is almost everything. Therefore, though they may be very often poor, they are, in Native estimation, respectable. This springs from a peculiar and complex state of things, which in this country we cannot fully render intelligible; but it is a simple matter of fact there, that the most respectable class may be the very poorest; this circumstance, therefore, should not be overlooked, that those who obtain these higher offices, if of good caste, and otherwise duly qualified, will be respected.

4215. Does

Rev. A. Duff, D.D.

19th April 1853.

4215. Does your general observation lead you to believe, that those persons who have been raised to Judicial and Revenue offices, though poor in condition, are generally of a superior caste?

As far as I have personally known those who have been elevated since the recent improvements to the offices of Moonsiff or Sudder Amin, or Deputy Magistrate or Deputy Collector, they have been of good caste, though not the highest. I have no doubt that if the salary were somewhat increased, both in regard to Moonsiffships and other superior offices, you would have not a few connected with the Zemindar and titled classes who would come forward and aspire to them. Formerly the Courts of the Moonsiffs were despised by the higher Natives—they detested them—they did not like to come near them; but that feeling is disappearing very much, owing to the greater respectability of the new Judges. One great matter would be to raise the salaries. They are, at present, relatively far too low: 100 rupees a month for a Moonsiff, one of a class which settles three-fourths of all the civil suits brought before the Courts, is scarcely sufficient. Then also the system of gradation should be regularly established, so that by a fair and not over-tardy prospect of promotion, they might be wholesomely stimulated to well-doing, and in cases of distinguished merit be privileged to terminate their career by being appointed to offices now held exclusively by the covenanted servants of the Company. In regard to the salaries, however, while judging an increase to be desirable, one would say that it is not reasonable for the Natives to expect the same amount of salary in their own country, that Europeans who are foreigners, self-exiled from home and kindred, and labouring against the manifold disadvantages of an uncongenial clime, already filling the same situations, have. The difference is such as to commend itself to every reflecting mind, and would do so if properly explained.

4216. Lord *Elphinstone.*] Are the Committee to understand, that you would make such a concession to Native feeling and prejudice as that you would not appoint people of low caste to the office of Moonsiff?

I should be very much guided in that respect by the state of things, and the state of popular feeling in different parts of the country. I believe this to be the fact of the case, that that might be done to a considerable extent in Bengal now, from its people being so long accustomed to us and to our English ways, which could not be advantageously done in other parts of the country. In Bengal, I believe the prejudice against such appointments as those now referred to would not be so strongly manifested; but in many parts of Southern India it would, I fear, be insurmountable at present. Such a step would utterly revolt the feelings of the Natives; and however highly qualified a man might be, if he were of the Pariah caste, the respectable Natives would not come near the Court. Therefore, I think our proceedings ought to depend upon the state of feeling in the different localities. The tendency, however, of our educational processes is to do away with this feeling.

4217. Earl of *Harrowby.*] It has been suggested that the Native Judges might be taken from among the Vakeels, but that under the present system, which requires a regular gradation through the office of Moonsiff, that cannot be done, in consequence of its compelling a man who may be earning a good income as a Vakeel to begin at the bottom, in order that he may rise up again to the office of a Sudder Amin; what do you think of that system?

This is a transitionary period. Apart altogether from the question of emolument, to take the Vakeels of the old corrupt school at once, and make them Judges, would just be to perpetuate all the old corruption. We are in a transition state, and during every transition state, where great improvements are going on, it must be the case that individuals may possibly suffer.

4218. You think it would not be desirable to take Vakeels and at once make them Judges?

From all I have seen of them, I should say they are the last class who ought to be appointed Judges; they are mixed up with all the endless and intolerable, and I may say indescribable, corruptions which have brought such obloquy on our Courts of Justice. It would never be possible for any British gentleman who has not been in India, and mixed with the people, to know anything of the real nature and extent of those corruptions, they are so endless and so complicated.

Rev. A. Duff, D.D.

19th April 1853.

4219. Lord *Elphinstone.*] There is a great difference between the Vakeels who practise in the Sudder Court at Calcutta, and the Vakeels in the Zillah Courts in the country, is there not?

Yes; there ought to be a distinction made. In Calcutta there are some who are of a very much better and superior class. Besides East Indians and others, there are some practising in the Sudder Court at Calcutta who are of this new class of Natives which I have referred to; I mean new as regards their improved European ideas and feelings.

4220. Earl of *Harrowby.*] Would not you be likely to raise the character of the Vakeels generally, by holding out to them this premium to good character and conduct?

It was that which led me to say originally, that I looked upon it as one part of the training which would be requisite to fit men to be Judges, that they should be required to go and practise at the Bar of the higher Courts. And were the salaries of the Native Judges increased, and a fair system of promotion instituted, I cannot doubt that men who earned a good income as Vakeels would, from the greater certainty of the income and the greater dignity of the office, be ready to enter the Judicial service.

4221. Lord *Broughton.*] You have spoken of the corruption of the Vakeels; they are but agents of the parties, they do not decide anything; how, therefore, can they be corrupt?

It is not very easy to understand the matter in this country, but it is the simple fact that scarcely a single case that goes to a Court in India goes there without bribery and without perjury on all sides; I mean literally what these words denote. It is the case, as far as I could ever learn, everywhere in the interior. Now the Vakeels of the old school, to whom I more especially referred, have endless ways of promoting litigiousness, of perverting and corrupting those around them, and of distorting the truth by collusion and otherwise, in their various pleadings; it must be owned at the same time that they are aided in this exceedingly by the comparative ignorance of the vernacular language on the part of the presiding Judge; this source of the mal-administration of justice would be greatly rectified by the presiding Judge being an adept in the native language; in Bengal, with a view to this desirable end, some effective measures have within the last few years been adopted; and the full maturing of these would be part of the prospective improvement I contemplate.

4222. Lord *Monteagle.*] Does a Judge, if he detects a Vakeel in taking a bribe, prevent him from ever again practising?

It is in his power to do so, but it is very difficult to detect such cases.

4223. Do you know of any cases in which Vakeels have been detected?

The practice of corruption is notorious, though very difficult of detection on the part of the European Judge; actual cases of detection on his part do not now occur to me. But it ought to be remembered that the European officials and functionaries in India stand above the mass of the people; so much above them and aloof from them, that they only see the upper surface; you must be entirely unconnected with the Government service, so as to excite no fear and no apprehension, and then you may go among the people and hear what they say; you can then become familiarly acquainted with what they think and say and do, just as in this land we become acquainted, by mingling with private society, with what is current in our courts and private circles; of course when cases of corruption are discovered, they are dealt with accordingly.

4224. Is there the same facility of discovering them there, that a Judge would have here for discovering the mal-practices of the lowest class of attorneys?

I should say not, since it is very difficult on the part of foreigners, like ourselves, to understand the nature, character and inner habits of the Natives. There have been endless causes co-operating for centuries, as one may say, in leading to a result, which is unspeakably deplorable. First of all there were the endless tyrannies to which they were subjected, generating the slavish vices displayed by persons under despotism and misrule. Then our system of management, with the very best intentions, has not been what it should be; powers have been given to the Zemindars of Bengal, for instance, which have had no due respect to the rights and privileges of the ryots. It was through our ignorance, but it happened in connexion

Rev. A. Duff, D.D.

19th April 1853.

with the perpetual settlement, that many of the rights and privileges of the ryot were absolutely ignored; he was put far too unconditionally into the power of the Zemindar. Then as a part of this system, and in great measure springing out of it, the demands and exactions of the Zemindars, unauthorized by law, are endless and nameless; and it is scarcely possible, such is the state of corruption, for the Government, by any mere legislative enactments, to rectify it; it is a system which has done much to vitiate and deteriorate the Native character, and, in fact, often render it desperate. Then, further, the police system has operated injuriously on the Native character. The chief man connected with the Native police is called a Darogah, the head of the district station; heretofore, he has, generally speaking, been a man of low birth and low caste, and therefore despised by the Natives; his salary, though lately somewhat improved, was so low, 25 rupees a month, that it often did not pay his travelling expenses; every one saw that he must make it up somehow or other; he not only did so, but very soon realized a fortune. Endless mischiefs, however, were thus inflicted upon the mass of the people; and such innumerable temptations held out to lie and to conceal, that it would take a long time indeed to enable one, even though favourably circumstanced, to come to anything like the bottom of the evil.

4225. Could not a Native Judge detect such evils better than a European?

Yes; and that is one of the great advantages of having a qualified Native Judge. Still further to illustrate what I have already said, suppose a burglary takes place, and the Magistrate hears of it, then an order is sent to the Darogah, and he is despatched to investigate it. So great was the mischief that usually ensued from the visitation of that functionary, that Lord William Bentinck, as his only remedy, passed a law declaring that the individuals in whose house there might be a theft or burglary, if unaccompanied by violence, were not under the legal obligation of reporting or revealing to anybody what had taken place. This was an actual ordinance of Lord William Bentinck—what was the reason of that law? If a householder or villager reported that a burglary or theft had taken place in his house or village, the Darogah must be sent down to investigate it; and Lord William Bentinck came to learn that the exactions and oppressions of the Darogah were so intolerable that it was far better to submit even to theft and burglary than to submit to so tremendous a visitation. This is a fact which should be generally known as illustrative of the extraordinary state of Native society in Bengal. The Darogah's proceeding was ordinarily of this kind, though of course it varied indefinitely: he would go down to the village and cast about with a keen covetous eye; his object was not in the first place to find out the real culprit, but to look about and discover the man who had got the most substance; he would go to him and say, "You are connected with this outrage; at least if you are not the perpetrator, you knew of it, and I will have you bound down and compelled to go up to the Court as a witness." The man shrinks from this; he cannot endure the thought of having to go up, perhaps a distance of 50 or 60 miles, or more, as a witness, to be detained possibly for weeks, his family being left behind in what a Hindoo considers as a most destitute state, and subject, it may be, to endless dishonours: he shrinks, and begins to compound with the unscrupulous officer of justice to let him off; and according to his means he will give 10 or 20 or more rupees to get liberated. The Darogah will perhaps go all round the whole village in this way, levying his lawless contributions as he goes along. That this is one of the most ordinary methods of proceeding on the part of the Darogah every one in Bengal well knows. Another cause would be, in his ignorance of the guilty party, to go and fix upon an individual, and say, "You are the guilty party;" and if the accused party fail to satisfy him in the way of bribes, he would next get individuals to come and give evidence against him sufficient to enable him to send him up to the Tannah. There was also a system which prevailed to a great degree within Bengal, which probably has nowhere else existed in the world to a like extent—I mean the system of forced confessions extorted from persons who are innocent: this is also as notorious in Bengal as any practices connected with our Courts here in Westminster can be. Perhaps by threats or by bribes the Darogah will lead a man to confess, as he wants to have a man charged with guilt. The Magistrate having told him that he must bring up the criminal, or by such a day he will lose his office, in order that he may not suffer in this way, he must strive, by fair means or foul, to get the charge fastened on some one. Perhaps he coaxes and bribes some poor creature into compliance with his wishes; he tells him, if you confess, you will get such or such a reward, and escape such or such consequences. That there are such cases as these is notorious.

Rev. A. Duff, D.D.

19th April 1853.

Here is an actual occurrence of this description: a case of a murder had been reported; the Darogah proceeded to seek the criminal, and, from some cause or other, failed; the Magistrate dismissed him from office, and sent down another man, the Mohurrer or Registrar of the Court, with the promise of promotion if he succeeded; at first, he failed too; but at last he offered a reward in money to any man who would come forward and confess; in this instance, two persons came forward and made confession. The officer then got up a tangled mass of circumstantial evidence, weaving a web of apparent guiltiness round the men. Perhaps some persons would say, "On such a night the men were not at home." The Native Chowkeydar might come and testify that he found them returning in the morning suspiciously, and so forth; in short, a system of entire fabrication was speedily and ingeniously carried out. The case actually went this length, that the men, being brought up before the Magistrate, he convicted them or sent them on to the Sessions Judge, who, in his turn, handed them over to the Nizamut Adawlut, which condemned them, and pronounced sentence of death upon them. In this instance which has been recorded, where the two persons were thus brought up and convicted, and condemned to die for murder, it turned out afterwards that it was discovered that on the day or night when the murder was said to have been perpetrated, they were both in the civil gaol on account of another offence, so that of course they were liberated. Cases of a somewhat similar kind are notorious in Bengal.

4226. Lord *Elphinstone.*] Would they have been hanged?

Unless the discovery had been made in time to prevent it, they would have been.

4227. What bribe can induce people to confess under such circumstances?

The mass of the people being unhappily ignorant and cowardly in a high degree, the Darogah no doubt would promise his deluded victims that they would be forgiven if they threw themselves upon the mercy of the Court. It is not a few questions, however, or a few short answers, which would bring out this iniquitous system in its integrity or varied ramifications.

4228. *Chairman.*] Surely a system could not have been very general whereby Natives were induced by bribes to put themselves in a predicament in which they might be put to death?

That was an extreme case, which was now adduced merely for the purpose of illustration, involving liability to capital punishment; but the number of instances of a minor kind are very large indeed—I am almost afraid from memory to state the amount; but I have seen it marked down on respectable authority, that cases which involved hired or extorted confessions nearly equalled, or even exceeded, the half of those that were brought before the Magistrates.

4229. You mean, that the Darogah derives such emoluments from corresponding cases; that he has funds at his disposal to bribe parties in others?

His object in the particular cases referred to would be to save his own office; his office to him being money, or the high road to speedy fortune.

4230. Do you think a miltary police would be a good substitute for the present system?

It cannot be doubted that, in the present wretched state of Bengal, a military police, properly organized, would be a great boon and benefit.

4231. Earl of *Ellenborough.*] Assuming that, in the formation of a military police, 800 or 900 men were under the command of a European officer; that he passed his judgment upon the persons who offered themselves for the police, putting aside those whom he thought unfit, and that all the subordinate offices were filled by soldiers and non-commissioned officers, selected for good conduct from the Native regiments, what should you say of such a system?

I presume the question is, whether this would be a system which would be suitable in the present state of Bengal; if so, I believe it would answer a great and a good purpose. In point of fact, for years past, it may be said that substantially there has been neither law nor justice for the down-trodden people of Bengal. Not that the Government do not wish for it. The Government have passed some very good laws, and given good injunctions and instructions to the subordinate authorities; but the executive being almost wholly in the hands of Natives of the description I have indicated, nothing effectual in the way of remedy could be achieved; every

Rev. A. Duff, D.D.

19th April 1853.

good measure has greatly failed in the execution. There is no doubt, however, that even if the present system were continued, it is capable of amendment. If the office of the Darogah, for example, were raised and made a respectable office with a commensurate salary, just as the office of the Native Moonsiffs has been raised; if the Darogah obtained a salary, which would fairly put him above the liability of being almost inevitably tempted to all this extortion, bribery and corruption, that would be a great step. Something has already been done in this direction, but not nearly enough. And though we might not in the first instance get a really superior set of men for the office, we might in the course of years confidently look forward to our obtaining them. In deference, however, to the strongly-expressed sentiments of the respectable Natives of Bengal, the very name of the office should be changed; the word "Darogah," from its odious associations, should be expunged from the language.

4232. By whom, practically, are the present policemen selected?

The Darogah is selected of course by the Magistrate. The Darogah himself has very much to do with the appointment of the inferior Constables or Burkandazes, though I presume these appointments are subject to the approval of his superior.

4233. Do you think he takes money for selling those situations?

I have little doubt that money is ordinarily taken. Indeed not only is this the case in regard to that office, but in regard, generally speaking, to all situations throughout the country, with the appointments to which the Natives have anything to do. Hitherto office has been coveted by Natives, not so much on account of the salary attached to it, as on account of the opportunities it afforded for making money by undue means.

4234. Is it possible that the Magistrate can exercise any sound discretion in the selection of the Burkandazes?

In the present arrangement of things, it would be very difficult; but if the Magistrate's office were separated from the judicial office, he would have so much more time at his disposal than he has now, that he might be enabled to ensure a sounder discretion in this matter. His time now is greatly devoted to the decision of cases as a Judge, therefore he has it not in his power to go about the country and take the immediate control of everything himself, as he would otherwise be enabled to do. If this separation took place, and Zillahs, which are now too large, were broken down into two or more, with Deputy Magistrates appointed, there is not a question that he would be able to set matters right in many ways. But in connexion with this lower class of officials there, we must not overlook another set of police in Bengal, the village police, whose number I have seen estimated at not less than 170,000, some making it as high as 200,000, and who are also as corrupt as it is possible to conceive. Over them the Magistrate exercises but a very imperfect superintendence; they are named by the villagers. The Magistrate has some nominal control over them, and the villagers have some control; but I should say, by habit and repute, and in the estimation of the Natives themselves, they are simply professional thieves, or the aiders and abetters of thieves.

4235. Would not it be better to deprive them of their power as policemen?

Yes; we should, as soon as possible, break up that village system of police altogether. I believe it costs Bengal, as far as the Government statements are concerned, about 60 lacs of rupees or 600,000 *l.*, paid by the villagers. If those 600,000 *l.* a year were expended upon perfecting a real system of police, no doubt Bengal could be far better ordered than it now is, without any additional cost to the Government.

4236. Lord *Elphinstone.*] Are you aware that what you are now proposing was actually done at Madras, but was afterwards given up?

I was not aware of that. In order to give a better chance of success in Bengal, I would effect a change throughout the whole system. The Darogah, with his name changed, would be exalted and made a very different officer from what he now is; his superior assistants, too, should be better paid, and of a higher class. My impression is, that if the situation were made respectable, and the detested name of Darogah abolished, you would find young men of respectability ready to take the office; provided, also, there were such a system connected with the police as is now connected to a considerable extent with the administration of justice; that is, a graduated system of promotion. I do not see why there should not be different grades in the police, so that a person holding the office of Darogah might, if found duly qualified, be advanced to that of Deputy Magistrate or even Magistrate.

4237. Do not you think that, by obtaining the co-operation of the Zemindars, you might improve the Chowkeydary system, and make it the foundation of the system of police?

At present that would be very difficult indeed, because, in point of fact, all those Chowkeydars are very much in the service of the Zemindar; they are to a great extent his creatures; they help him in exacting his dues; they are often in his pay, and will do anything which he chooses.

4238. You proposed just now that the Zemindars should occasionally be selected as assessors to the Judges, and should be encouraged by honorary rewards to give their services to the Government; do not you think if that system were followed out, and those Zemindars whose villages were in good order, and who gave efficient assistance to the Magistrates, were promoted, great benefit might be derived?

In time that might be the case; at present it would be difficult.

4239. Lord *Ashburton.*] Do you consider that the present generation of civil servants of the Company are answerable for the existence of the abuses you have described?

Certainly not, intentionally; but no doubt they may be answerable indirectly in another way, inasmuch as from their comparative ignorance of the language and of the laws, and, perhaps, from the general imperfection of the system, some of these abuses may have sprung up; it has not been from any intention on their part, but because it was not in their power, circumstanced as they were, to apply an effective remedy.

4240. Do not those abuses arise from mistakes which have been made by our predecessors?

No doubt; but this mistaken system, one would say, arose at the time simply from ignorance of the real nature and necessities of the case; those who established this system had a good intention; they meant to do what was right; but the system turns out to be, in many respects, inapplicable, and therefore the time has come for wisely amending it.

4241. Lord *Elphinstone.*] You would not, for example, attribute any evil intention to Lord Cornwallis when he made the permanent settlement?

On the contrary, he did it with the very best motive and intention. It so happens, in point of fact, that in the proclamation which he issued upon that subject, there are passages which clearly indicate what the real intention was. He expected that all the former abuses connected with the endless exactions and variations of public demands on Zemindars and Ryots would be put an end to, and, therefore, that the Zemindars, seeing what benefit they had derived from the new settlement, would co-operate with the Government and deal with their Ryots in a kindly way; and that they would improve the cultivation of their lands, and become thriving and wealthy.

4242. Lord *Mont-Eagle.*] Do you know anything of the administration of justice in the Native States?

From personal knowledge I could not say much respecting it; I have been but little in the Native States.

4243. You do not know whether those abuses which you have described exist there?

There are abuses which seem to be, if not peculiar to Bengal, yet existing there in a very exasperated form.

4244. Do you think they are worse in our territories than in the Native States?

In one respect they may be worse; in another respect they are not. The sources of abuse in the two cases are somewhat different. As regards general security and protection on the part of the Government, all things are better in our territories, and hence a freedom from certain species of abuse. With respect to the administration of justice in the Courts, I cannot say much of the real nature of the difference between Bengal and those Native States; but things in Bengal have been improving, and in the North-Western Provinces things have immensely improved. In connexion with the drying up of the springs of these endless

Rev. A. Duff, D.D.

19th April 1853.

endless abuses and corruptions in Bengal, one thing which should certainly be insisted on, at whatever cost, would be to do that which was omitted to be done by Lord Cornwallis; I mean that there should be a survey of the Zemindaries; that the boundaries should be defined with rigid accuracy; and that the plots and farms of the different ryots should be carefully marked out, just as has been done in the North-Western Provinces. There are numberless abuses that arise from those not being at all properly defined or marked out, the Zemindars fighting with each other, and the ryots fighting with the Zemindars, and with each other. Those are sources of a lawless anarchy in Bengal, which is really as disgraceful as it is deplorable.

4245. *Chairman.*] Is that one of the causes of the multiplication of law-suits?

It certainly is one of them. The not defining the boundaries of the Zemindaries leads to great confusion; one would say that, for the sake of our own credit and name, a remedy for that evil should be set about with determined energy. In the North-Western Provinces, before the recent survey took place, there were thousands of law-suits and violent affrays; but marking out the boundaries, and taking note of the rights of the ryots, has led to great improvement. Crime has diminished, and law-suits have diminished there far more, they say, than any amount of mere legal terrors could possibly have realized. I have no doubt that it would be followed by a somewhat similar result in Bengal if the same process were carried out.

4246. Lord *Elphinstone.*] Would there be no objection on the part of the Zemindars to such a survey?

I have no question that there are Zemindars who would not like it, and on this account, that their Zemindaries, in point of fact, are often larger than they were estimated at when the settlement was made, and they might be afraid that part would be taken from them, or proportionally assessed. There would be resistance made, perhaps, in such cases but still if the measure were gone about in a conciliatory manner, I have no doubt it would be felt to be such a boon to the great body of the people that it would be hailed by them with delight.

4247. Earl of *Harrowby.*] You speak of the state of Bengal as being worse than that of the other provinces; to what cause do you attribute that?

I said it was worse than that of the North-Western Provinces; I should not like it to be supposed that the comparison was with Bombay and Madras. I do not from personal observation know those Presidencies sufficiently to be able in this respect to compare Bengal with them; also, in comparing Bengal with the North-Western Provinces, there is something to be attributed to the peculiar character of the people. The Natives of Bengal are intellectually as quick, and probably show as much business capacity, as the Natives of the North-Western Provinces; yet undoubtedly, partly from the superiority of the climate and its more bracing nature, and partly from the Natives living upon more generous food, they are physically a finer and more manly race in the North-Western Provinces. The Natives of Bengal, from their more relaxing atmosphere and less nutritious food, are more slender in form, and more timid, and have undoubtedly submitted to a variety of exactions and oppressions, to which the Natives of the North-Western Provinces would not have submitted.

4248. Do you attribute any of the results you have mentioned to the longer duration of our sway?

I do not know exactly how far that would operate. If there had been no settlement in the North-Western Provinces; if the boundaries had not been marked out; if there had not been the wise administration which has existed there for years past, and if things had been allowed to go on there just as they were 20 years ago, very likely by the end of a period equal to that of our occupancy of Bengal, the result might have been the same.

4249. The whole of the property of Bengal has been confiscated over and over again, has not it, in consequence of the revenue system existing there?

I have understood that as large an extent as two-thirds has been transferred to new hands since the perpetual settlement; but certainly from all appearance more than half of it has been so. There are but few families in Bengal who were the occupants of their present estates at the time of that settlement.

4250. Lord *Elphinstone.*] Was not the perpetual settlement in some degree a measure of confiscation?

Yes, precisely; that was what was formerly alluded to: the Zemindars were

Rev. A. Duff, D.D.

19th April 1853.

declared to be the actual proprietors, though they were only gatherers of the revenue; while the territorial rights of the ryots were practically ignored.

4251. May not that have had something to do with the deterioration of the character of the Bengalese?

No doubt it has; but it was very degenerate before that. The fact is, that before we assumed the administration of justice in Bengal during an interval of several years, corruption in some of its forms appeared to be at its height. Justice, in particular, seemed to have been openly bought and sold.

4252. Earl of *Harrowby.*] The old authority had been destroyed, and no new authority established in its place?

Yes; and when our new authority came to be established, Bengal was in an extremely degenerate and corrupt state; and also this is to be added, that in the North-Western Provinces the Mahomedans settled down in greater numbers than in Bengal, or anywhere else; it was the seat of Government; their settling down there in great numbers tended to discourage, to a great extent, the more obtrusive displays of the viler slender superstitions; it tended so far to give a shock to these; whereas in Bengal, from its not being so absolutely under Mahomedan power, those grosser superstitions went on reigning and rampant, and many of those corruptions and abuses now complained of have arisen, not primitively in reference to causation, from any system which ours or any other Government has instituted, but they arose very much out of their own very deteriorating systems of superstition and idolatry.

4253. Lord *Elphinstone.*] You have just intimated that the period when corruption reached its climax was before we entered on the administration of Bengal; was there not also a similar period in the North-Western Provinces; was not it the fact, that when the Mahrattas had those provinces, their system of government was as corrupt and as bad as the system which existed in Bengal before we assumed the administration there?

No doubt it was bad enough; in Bengal I suppose the fact was this, that we, with our paramount military power, kept the people down, while others were allowed to oppress them just as much as they liked; in the Upper Provinces there was more of that energetic character which took into its own hands the rectification of existing evils.

4254. You said that the influence of superstition was much stronger in Bengal; is not there a much larger proportion of Mahomedans in the Upper Provinces?

That is just what I stated; the proportion of Mahomedans is larger there. Now, the very system of Hindooism throughout, from its monstrous extravagances, tends to generate a singular credulity of character, and leads, in fact, to a very great disregard for truth; let any one just try to realize what the effect must be upon the national character when the beings who are reverenced and adored are themselves of characters such as, if they were to be now manifested on earth, they would be not only contemptible but punishable; I refer to this now only on account of its operation upon the moral condition of the people; the masses of the Bengalee people are taken up entirely with the worship of their gods and goddesses; they hear their legends everlastingly rehearsed; they have their festivals at which they are dramatised; those legends are full of abominations of every kind; some of their gods, for example, not only patronize drunkenness, but were drunkards; some of them not only patronize thieving, but were thieves; some of them not only patronize murder, but were murderers; some of them not only patronize lying, but were liars. I speak now in the same manner as I would speak of these things to any of the intelligent Natives themselves. These are matters so well known and notorious, that they will at once acknowledge them; and if you speak kindly to them, they will listen to any friendly exposure of their system. One would like, then, to know how it is possible for the human mind to be everlastingly in contact with phases of character such as those now indicated, on the part of beings that are actually worshipped, without receiving an evil tincture bias which tends to deaden and quench all the higher and finer sensibilities of our nature; yea, and to extinguish the distinction between right and wrong, between truth and falsehood; leading them at last to be careless whether a thing is true or false; so that in Bengal it has almost passed into a proverb, that a Native prefers a falsehood to the truth if you present him with both, and either will equally serve his purpose.

4255. Earl of *Ellenborough.*] Those causes of degeneracy do not affect the Mahomedans?

Not those particular causes; the Mahomedan looks of course to Allah, his own god, and to Mahomet as his prophet. There may be other influences, however, connected with his own peculiar system, which tend also to cause his character to degenerate.

4256. Lord *Elphinstone.*] Do you find among the youth in Bengal that the Mahomedans are more truthful than the Hindoos?

I should say, taking them as a whole, that might possibly be found to be the case, because there are not the same operating causes to lead them to a total disregard of the truth; the point, however, is one not easily ascertained. In my previous remarks respecting the generating causes of untruthfulness, I have been speaking rather of the lower and more illiterate classes of the Natives; the higher and more learned classes of the Hindoos, at least the more speculative part of them, follow sundry transcendental systems. They have all the types and forms of Pantheism which have ever emanated from Germany, only much older; they have the material form, the ideal form, and the spiritual form. These systems lead also to a total disregard for what we call sin or guilt, and of right or wrong; the tendency of any one of them, wrought out practically, is to annihilate conscience; the tendency of idolatry is, for the reasons indicated, to operate very much in the same way; so that in reality we often feel, in dealing with these people, whether they be under a higher Pantheistic system of their own, or under any popular idolatrous system, that, in the case of adults, we have almost to begin to create a conscience. This is language that is common among us, that we have to create as it were a new soil for the reception of the seed of truth at all; hence the real, though often unnoticed, source of some of the difficulties which the British authorities have had to encounter in the administration of justice. Then let me say this, in connexion with the same subject, that there is a cause which operates in the way of multiplying suits and entangling the prosecution of them, which is not obvious upon the surface; it is that with the people there is an impression that there is a god or a goddess of justice, who presides over all departments of it; in reality, when persons go to law, you will often find them privately applying to a Brahmin that he may propitiate the Deity; and they think that it is the power of the Deity operating upon the Native or European Judge which is to decide the cause, and not the right or wrong of the case, and therefore one can see how this superstitious belief also operates upon the Brahmins, and others, leading them even to encourage such law-suits, because they are aggrandizers thereby, and we know that they do encourage them. The party that gains goes to the Brahmin and makes a new present to him, because the success is attributed to his intercession with the goddess; the party losing will do the same thing, because he has been made to know that he has lost, because he has not given enough money to secure the propitiating influence: you constantly see natives going to one of the temples at Calcutta to make offerings there, in order to ensure the favour of the goddess; this again gives an interest to the Brahmin in multiplying, prolonging and complicating law-suits.

4257. Lord *Wharncliffe.*] The Committee understood you to state that the provincial police in Bengal were maintained at an expense of 600,000 *l.*?

That is the village police, properly so called.

4258. In the Bengal Presidency?

Yes, in the Bengal Presidency.

4259. Would not that appear among the expenses of the Judicial Establishment?

No; because the village pays it. The aggregate cost to the villagers is what I have stated; and seeing that these are bound to pay it, in my opinion that sum might be taken for the purpose of securing the more effective working of the police.

4260. Earl of *Harrowby.*] Is an allowance made for it in the tax paid to the Government?

I am not aware that there is.

4261. *Chairman.*] Can you state to the Committee any facts with regard to the state of the prisons in India?

With regard to prison discipline, its bearing upon the judicial system seems to be

Rev. A. Duff, D.D.

19th April 1853.

be this: there is an inadequacy in some of the modes of punishment connected with it, which tends greatly to encourage the commission of crime; for instance, one defect is the employment of a large proportion of the prisoners in out-door labour; they are extensively employed in this manner. This tends in the first place to familiarise the mass of the people to the sight of criminals, in a way not fitted to deter them from crime. The great bulk of the Natives, being labouring ryots, see that they suffer nothing from this, that they seem happy and comfortable, that they get better food, and need do as little work as they choose. Any one can see that they are among the merriest and the happiest Natives in Bengal; they sing their songs and smoke their hookahs; and it is no punishment to the great bulk of them; therefore, I believe the Prison Committee, 14 or 15 years ago, very properly recommended that that system of out-door labour should be utterly abolished, as leading to the increase of crime.

4262. Was not Sir Edward Ryan one of the persons who signed that report?

I believe he was.

4263. Have those recommendations been carried out?

I am not aware that they have been followed. At the time of my leaving Bengal the practice of out-door labour was still continued; the general system, recommended by the Committee, was supposed to involve so large an expense that the Government would not look at it. At the same time the evil of the present system is so great, that any expense would be well incurred in remedying it. Another thing, with regard to out-door labour, was that it cost the Government double what free labour cost. That there should be a classification of prisoners of some kind, I suppose every one would own, and that they should not be all herded together as they are now, but as far as possible separated. Another recommendation of that Committee was good: formerly the prisoners were accustomed to get allowances in money, with which money they were permitted to go and purchase what articles of food they liked; that was a great evil that the Committee recommended to be abolished, and they substituted rations of food instead. This has operated very beneficially; they recommended something beyond that which has not worked so well, which is the common messing.

4264. Lord *Wynford.*] Has the general discipline in the gaols been improved?

It may be somewhat improved, compared with the state of things which existed formerly, but still it must be acknowledged that there has been very little done hitherto in the improvement of prison discipline in Bengal. In Agra, an improved system has been lately introduced. The expense is that which has been generally objected to. The objection to the messing system arose simply from this, that it involved the loss of caste, and it did not carry the sympathy, therefore, of the Native community at all.

4265. Was not it felt as a severe punishment?

Severe on this account, that it involved or might involve the loss of caste; and here it may be stated that another cause of judicial difficulties in former times arose from the existence of Europeans in the interior of Bengal, not under any law except that which was administered by the Supreme Court of Calcutta. The reason why they were not put under the Mofussil law might be, that the system was so bad, and the Judges so inefficient, that one would not like to see English people put under such an administration; but the fact that they were not under the Mofussil law, but were amenable only to the Supreme Court, led unquestionably to a great deal of disturbance and confusion. There have been among them individuals of character who did well with the Natives, and wrought for good among them; but talking of the system generally, it must be said to have been wrong in principle, and it operated injuriously, because, in consequence of the distance from Calcutta, the Natives saw that there was no hope of their getting justice, and the Europeans were allowed to do what they liked with impunity. There are many facts indicating the existence of a lawlessness that was absolutely outrageous. A new code of laws and a more effective administration of them would put an end to all this, and lead to still further improvement throughout the country.

4266. Does not it happen occasionally that there is not sufficient accommodation in the prisons for the prisoners who are committed?

There is often very inadequate accommodation.

Rev. A. Duff, D.D.

19th April 1853

4267. Are not they taken to a distance from the gaols, and employed on the roads?

That is the system of out-door labour which has been carried on to a great extent, and not for good.

4268. *Chairman.*] Is that put an end to now?

It was not put an end to when I left Bengal, which is three years since.

4269. Lord *Wynford.*] Is there any system adopted in the interior of the gaols for reforming those prisoners who are confined there?

That was another great deficiency; there was no system that I knew of for really reforming them.

4270. Earl of *Harrowby.*] Would not it be very difficult to undertake such a task, considering the religious condition of the prisoners?

There would, doubtless, be more difficulty in that country than there would be here; but there might be opportunities and means by which something might be done in a certain way without interfering with their prejudices in an offensive manner.

4271. Is there any common ground upon which you can talk on such subjects to a Hindoo?

The common ground is this, that the Hindoo is naturally a very religious being in his own way; his mind is always full of thoughts of the gods and his religious duties. They have a system which is with them religion, and they have books which they reckon sacred or divine, as we have.

4272. Can you appeal to those books in conversing with them?

We can only do so to the extent of their admitting that there is a something supernatural and divine.

4273. Lord *Elphinstone.*] You said, just now, that they hardly possessed such a thing as conscience, and their minds were, so to speak, unwrought ground?

To a very great extent; I said that this was the case with adults who had grown up under the full influence of their own system.

4274. Therefore, the difficulty of imprinting good ideas in such minds must be much greater than anything which we can conceive of here, where all people have some ideas of conscience, and of what is right and wrong?

The difficulty assuredly is very great, and it is felt and acknowledged to be so; and, therefore, many have gone to the other extreme, of saying that we must leave the adults to themselves, and look very much to the rising generation as the great hope of the future; I say to a considerable extent that feeling has prevailed, though, at the same time, among such a vast multitude of human beings, there must be exceptions to what I have stated.

4275. A man who is in gaol for theft, and who can address his prayer to a god whom he believes to be the patron of thieves, is not very likely to receive your instructions?

No, not in the first instance; on the contrary, he may simply feel that he is unfortunate in being caught; but at the time, perhaps, may have no proper consciousness of a moral offence. Undoubtedly, a company of thieves, before they go to steal, do usually go and make vows to the goddess, and promise her a share of their booty if they succeed; and if they are caught, they reckon it a misfortune; they say, we did not take the auspices aright, or we failed in some other duty towards the goddess. This is the aspect which the offence assumes in their minds. With respect to the Thugs, who are by profession murderers, even they, before they went out, were wont to proceed to the temple of the goddess Kalee, to perform their vows there, and to proffer to her a share of the booty if they succeeded; so that it could not be said, after conviction, that they had the consciousness of a moral offence in them. In fact, they said, We were born to this practice; it is our caste, our profession: just as one man is born to be a shoemaker, and another man to be a carpenter, so have I been born to be a Thug, that is, a murderer. That is the feeling of their minds, and surely all this opens up to us a view of the difficulties we have to contend with in attempting to reform them. And it is the wide-spread existence of facts like those which makes one often feel in India, that, considering the enormous difficulties which it had to encounter, the British Government has, perhaps, done relatively as much as it was practicable for a merely human Government, in such untoward circumstances,

and

and with such imperfect instruments, to overtake. Another thing to be considered is the endless variety of cross and refractory circumstances in the different parts of India. One system of things is working here, and another working there, and all of them, it may be, intensely differing from each other. It is the obtrusion of facts like the preceding which has led many to feel deeply that there are running sores, as it were, throughout the entire fabric and framework of Hindoo society, which no mere improvement of legislation, or in the administration of the law, or the police, will wholly reach. No amelioration in our legislative or judicial policy will reach the springs of some of those evils which I have attempted so inadequately to delineate. Their springheads are to be found in those deep-rooted superstitions, which work so disastrously in deteriorating Native society. Nothing we can do as law makers, or law administrators, can reach them effectually. Nothing, nothing can suffice but a real thorough searching, moralizing, and I should individually say, Christianizing course of instruction, which, by illumining the understanding and purifying the heart, will inspire with the love of truth and rectitude, and so elevate the whole tone of moral feeling and social sentiment among the people

4276. Earl of *Harrowby*.] Has the tone of moral feeling among those of the Hindoos who have been enlightened by education, but have not embraced the Christian faith, improved?

I should say there is a mixture; as to not a few of them, I cannot say that it has improved; but as to others, it certainly has improved; your Lordship's question is one which can only be answered in this modified form.

4277. The mere getting rid of those deteriorating influences of their own superstition has not of itself produced much?

Their liberation from that yoke only leads many of them to run into excesses in another way; that is the case in Calcutta: there are not a few in Calcutta who imbibe European errors, and copy European vices, which they could not as orthodox Hindoos have practised; that is greatly to be lamented; but there are some goodly exceptions, and those exceptions are to be accounted for, partly from their constitutional temperament, and partly from their having come into contact with Europeans. The whole state and structure of native society in a country like Bengal is just rotten to the core, and it needs to be renovated from the very centre outwards.

4278. It is an effete superstition?

It is effete in one sense, but it is vitally operative in another.

4279. Lord *Elphinstone*.] You must be aware that the state of the Marriage Act among Europeans, and particularly among Dissenters, was felt to be very defective; do you believe that the Marriage Act which was passed two years ago has remedied that defect?

With regard to Europeans, it undoubtedly has remedied it; there are some things about it which certain parties would like to be otherwise, but in the main it has given satisfaction; that I have ample reason for saying; there is, however, one deficiency connected with it which yet admits of an easy remedy; an expression occurred in it to the effect that it was designed to embrace all persons professing the Christian religion; that clause was put in for the purpose of applying to Natives who might become Christians; but then it was understood (for I happened to be at home at the time, and had something to do connected with the substance of that Act, as a party who had been out there, and as being concerned with memorials which had been presented to the Government) that there was to be at the same time a permission given to the Supreme Government of India to modify it, so as to suit the circumstances of native Christians; but I learnt the other day from one who has just recently returned from Calcutta, that, under the advice of the Advocate-general, the opinion of the Government was, that that Act was so worded that they had no power to alter it in some of those particulars which bore hardest on the natives of India; the consequence has been, that as regards the poor natives, they are placed in a sad predicament by that Act. Some of its provisions do not properly apply to them at all in their present form; for instance, there is the legal age; with us it is 21, with them it is 16; but the Act constrains them to be guided by our legal age. There are also various other provisions in it, which, however applicable to Europeans, are wholly inapplicable to the poor natives, and they feel it very greatly.

4280. Are not you aware that it was purposely left open for the Government of India

India to apply the provisions of that Act to natives or not, as they thought best?

That was most certainly my understanding at the time, and it was the understanding of others at home; and I was grieved to find that a different construction had been put upon it by high authorities in Calcutta. It would be exceedingly desirable that this point should be looked into. From what I learnt the other day, it has been applied to natives not in the way in which it was designed by its generous framers, and it has accordingly subjected them to fresh grievances, instead of conferring upon them a benefit.

4281. Do you mean that the native Christians are obliged to go before the Registrar?

Yes; and that in modes which involve considerable hardship. But the way in which the Act subjects them to the English divorce law is a still more intolerable grievance. A speedy remedy is loudly demanded.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next,
Two o'clock.

Die Jovis, 21° *Aprilis* 1853.

LORDS PRESENT:

The LORD PRESIDENT.	Lord COLCHESTER.
Marquess of SALISBURY.	Lord SOMERHILL.
Earl of HARROWBY.	Lord WHARNCLIFFE.
Earl of ELLENBOROUGH.	Lord WYNFORD.
Lord Bishop of OXFORD.	Lord ASHBURTON.
Lord ELPHINSTONE.	Lord STANLEY of Alderley.
Lord COLVILLE of Culross.	Lord BROUGHTON.

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

J. A. F. Hawkins, Esq.

21st April 1853.

JOHN ABRAHAM FRANCIS HAWKINS, Esquire, is called in, and examined as follows:

4282. *Chairman.*] WILL you be so good as to state to the Committee the offices which you have held under the East India Company, and the dates of your appointment to those offices?

I am not quite sure whether I can give the exact dates. I can give you about the time that I held each office. I was first, upon leaving College, appointed Assistant to a Magistrate and Collector; this appointment I held for about six months, when I was appointed Registrar of the Civil Court, retaining the office of Assistant to the Magistrate, and I acted as Assistant to a Magistrate and Registrar of the Civil Court about three years. I was then appointed a Joint Magistrate, holding independent jurisdiction over about six subordinate Police Divisions. There are two classes of Joint Magistrates, one who resides at the same station with the Magistrate, the other who has an independent jurisdiction in a separate Joint Magistracy; it was in one of those separate Joint Magistracies that I held office. I was then appointed Magistrate and Collector of a district about four years. I was then appointed Civil and Session Judge of a district; I held that appointment for a year, and I then came home on furlough. On returning to India I was appointed again Civil and Session Judge, and I acted in that capacity for a year. I was then appointed Commissioner of Revenue and Circuit of a Division, comprising six districts on the eastern side of the Ganges. I was then called to the Registrarship of the Sudder Court, which I held about ten years. I was then appointed Judge of the Sudder Court; I held that for about two years, when I came home. The whole period of my active employment having been about 25 years in the Bengal Presidency.

4283. Entirely in the judicial service?

With the exceptions I have mentioned. I held various appointments in the Revenue Department for comparatively short periods. I was Assistant to a Collector. I was Collector and Commissioner of Revenue. I went through the whole of the Revenue and the Judicial appointments, with the exception of not having been a member of the Board of Revenue.

4284. Had you in those offices good opportunities of forming an opinion as to the administration of justice by the Native Judges?

I was

J. A. F. Hawkins, *Esq.*

21st April 1853.

I was not only brought much into contact with the Native Judges, but as Registrar of the Sudder Court the whole of the correspondence relating to the Judicial administration of the Bengal Presidency by the Native Judges passed through my hands for a period of about 10 years.

4285. Will you state the mode of selection adopted in appointing the Native Judges?

Formerly they were selected merely upon the District Judge's recommendation. A Judge recommended an officer, and he was generally appointed to a Moonsiffship, that is to say, the lowest grade of Native Judge. Subsequently to that a different mode of selection and appointment altogether was adopted. In the year 1840 or 1841 it was left entirely in the hands of the authorities at Calcutta to select and nominate the persons to hold the different judicial employments by a process of examination. The civil authorities throughout the districts were authorized to receive applications from any persons who wished for judicial employments in the Native service, and were ordered to send up those applications, after having made previous inquiry as to the respectability and character of the parties applying. Those were sent down to Calcutta, and periodically there was an examination of the various applicants. This examination was conducted rather strictly in Calcutta; and all those who passed that examination were then put upon a roll, according to the degree of efficiency and acquaintance with the law which they were called upon to administer, which they seemed to manifest, and then as appointments fell, vacant, parties were selected in rotation from this list for the different vacancies. After their appointment they were watched in their proceedings, and promoted according to the different degrees of efficiency which they manifested in the discharge of their duties. This was ascertained from the annual or periodical reports submitted by the local Judges as to the number of cases which were decided by each, and as to the number of appeals from those decisions, and as to the number reversed. These formed the best materials we could get for forming an opinion as to the character of the men. Then when vacancies occurred in the higher grades of Native Judges, that is to say, the Sudder Auminships, the individual who was the best in the district (or, it may be, one in a different district), was selected and reported to the Government for the appointment. And the same course was taken with respect to the Principal Sudder Aminships, the highest class of Native Judges. When a vacancy occurred in one of those appointments, a selection was made from amongst the Sudder Amins, and the individual was recommended to the Government for the appointment. That was the general course of proceeding.

4286. Earl of *Ellenborough.*] All the information upon which you proceeded was somewhat of a statistical nature?

It was somewhat of a statistical nature; but we had also the opinions of the Judges who were constantly sitting in appeal from the decisions of their subordinates; they could always give us information as to the character of their decisions, and there were always means of getting information as to the position which the individual occupied in the eye of the Native community.

4287. How was that information obtained?

Chiefly by inquiries upon the spot.

4288. The Judge who made the report could not have the advantage of seeing the Native Judge in his Court doing business?

Not unless he made a point of going into the Court.

4289. *Chairman.*] Who were the examining body?

The examining bodies were appointed by Government; they were, for the most part, officers of the civil service.

4290. You think that the working of this system has been advantageous with reference to the qualifications of Native Judges?

Unquestionably; I can state a fact that will bring that out; that whereas, under the old system of local nomination, and the want of real supervision, we used to have constant complaints of corruption against the Native Judges, and after the new plan had come into operation, we used to have complaints of the same nature against the Judges appointed under the old system (who were not removed when the new system came into operation)—I think I can speak correctly with respect to the period of about seven or eight years during which I was Registrar of the

Court

J. A. F. Hawkins, Esq.

21st April 1853.

Court after the new plan of examination and appointment and inquiry into the respectability and character of the candidates came into operation—and I can state that, for the whole of that period, I do not believe there was one single complaint against any judicial officer thus appointed for bribery or corruption. There was a kind of *esprit de corps* amongst them, and, at the same time, they knew that they were watched, and that there was a certainty of promotion in the event of their discharging their duties faithfully; and, I believe, that the tendency of the system has been very much to raise the character of the Native judicial service.

4291. Supposing that a Native thought he had cause of complaint against a Native Judge, to whom would he address himself, and in what manner would the complaint be inquired into?

He would address himself to the Judge of the district by petition; the Judge would proceed, if it was a Moonsiff that was complained of, to take evidence, if the party complaining indicated evidence, or he would call upon the Moonsiff for an explanation of the charge. If it was an officer of a higher grade, the Sudder Amin or the Principal Sudder Amin, he would send the petition itself to the Sudder Court, and take their order as to the mode of proceeding, which would generally be by calling upon the individual charged to reply to the charge, and by taking evidence, if evidence was indicated.

4292. Earl of *Ellenborough.*] When the examiners examine those Natives who desire to fill those higher offices in the judicial department, do they require a certain degree of proficiency only, and if the Natives have acquired that degree of proficiency, do they place them at once upon the list?

The examination was conducted in this way: a certain number of questions taken from the Regulation Law, the Mahomedan Law and the Hindoo Law, were placed before the parties applying for appointment, and they were called upon to give written answers to them; that was one day's examination. Another day was fixed for an oral examination of those parties who had passed the first examination; there being a certain standard fixed for passing. Then those parties who had passed the oral examination were called upon to decide a case, the records of which were put into their hands without their being permitted to see the judgment, and they were required to draw up the judgment and the reasons for it. When they had passed through those various trials, they were put upon the list.

4293. Supposing that before that operation there were 25 upon the roll, the person so examined and found fit would be the 26th?

Yes.

4294. Then if others were subsequently examined, who were evidently superior to those who had gone before, could they attain a higher place, or must the first of those be put 27th upon the roll?

It was possible to obtain a higher place; it was in the power of the Sudder Court to place a man, under those circumstances, above those who, up to that point of time, had been before on the list; but that would be done with great hesitation, for fear of discouraging applicants.

4295. Did they attach a certain amount of numbers to each part of the examination, according to its importance?

Yes; in fact, I was the party who generally drew up the papers, and presented them to the Court in my capacity of Registrar.

4296. Lord *Elphinstone.*] Was the improvement in the character of the Native Judges coincident with the creation of those higher situations of Principal Sudder Amins?

Not quite; those higher appointments took place in the year 1831 or 1832, when Lord William Bentinck passed a law, by which the Native Judges were made eligible to the Principal Sudder Aminships. The plan that I allude to, I think, came into operation in the year 1840 or 1841.

4297. Then the mere creation of the Principal Sudder Aminships had not the effect of greatly improving the character of the Native Judges?

It certainly had some effect in improving them, by permitting them to look forward to those grades which had not been established before.

4298. Earl of *Harrowby*.] Has not a superior class of men come into the judicial service?

Undoubtedly; I have known instances of respectable landholders come into the judicial service who would not have thought of it before.

4299. Lord *Elphinstone*.] Has the pay of the lower class of Native Judges been increased?

It has, to a certain extent; and I believe it will be found that keeping up a considerable gradation of pay will be one of the most efficient means of keeping up the efficiency of the judicial service. The rate of pay has been increased to a certain extent in the lowest grade. The lowest grade, that is to say, the Moonsiff, has been divided into two classes, the one receiving half as much again as the other. The Moonsiff formerly had 50, 60, 70 or 80 rupees a month. The Government appointed the lowest grade of Moonsiff upon 100 rupees a month, and a certain number of those, a fourth of them, were eligible to the higher grade of Moonsiff; the higher grade of Moonsiffs receive 150 rupees a month. Then comes the Sudder Amin, with higher jurisdiction and higher pay, 250 rupees a month. Then comes the Principal Sudder Amin, with a still higher pay of 500 rupees a month.

4300. Lord *Stanley* of Alderley.] From the improved character of the Natives employed in the judicial service, are you of opinion that it would be expedient to advance them to any higher post in the judicial service?

The Principal Sudder Amin now has unlimited jurisdiction with regard to the amount of property upon which he is permitted to adjudicate; but I have some hesitation as to saying that they should be advanced to the highest post of all, and for this reason, that you will not find in the Native of India the moral principle that you will find in the European. As long as the Native is vigilantly supervised and watched over, and, at the same time, has something to look forward to in the way of promotion, I believe you will get a very efficient judicial administration by Native Judges; but, on the other hand, if you put him as a supervising authority, I think it might have the effect of lowering the tone of general administration of justice throughout the country, because you would not get the same tone of feeling throughout the service that you would get if it is under European superintendence.

4301. Then, in the present condition of the moral feeling and training of the people of India, you do not think it expedient that the Native Judges should be advanced to any higher posts than those which they now occupy?

I do not. I should be delighted to see a Native in the Sudder Court, but I doubt whether it would tend to the efficiency of the Native service, because I fear that the moral tone pervading the Native community generally is not of a character to admit of placing the Native in that highest position in which he is called upon to supervise the proceedings of others.

4302. A Native cannot be a Zillah Judge?

He cannot be a Zillah Judge, but he exercises the same power as a Zillah Judge as to the amount of property upon which he is permitted to adjudicate.

4303. It has been stated by a witness before this Committee, that he thought it would be expedient to improve the character of the Native Vakeels, for the purpose of getting a class of persons to devote themselves to the Bar, from whom the Judges might be selected; is it your opinion that any such improvements might be introduced, and that it would be expedient to select the Native Judges from that class of persons?

I believe a great deal might be done towards the improvement of the Native Bar in India; but I am equally satisfied that much must depend upon the Court at the Bar of which the Vakeel practises. The mode of pleading, I believe, is not such as is quite the thing to make an efficient Bar; in fact, the practice in India has not been hitherto to throw anything like responsibility upon the pleader at the Bar, either as to the statement of facts, or as to his opinion of the law. That has recently been introduced to a larger extent than formerly; but still there is no degree of responsibility resting upon the pleader with reference either to a correct statement of the facts, or with reference to a correct statement of the law of the case which he is called upon to plead. The consequence has been, that they have never been looked upon by the Bench with any degree of confidence; and we have

found

J. A. F. Hawkins, *Esq.*

21st April 1853.

found them to be practically promoters of litigation throughout the country. I think that if the pleader had to pass through an examination, and was required to sit in a Court of Justice for a year or two before he was allowed to pass his examination, so as to get a practical as well as a book knowledge of the law; and if after admission to the Bar he was called upon to plead the case orally in the first instance, before the entire record was read through by the Judge; and if he were made to feel his own position, and his duty as to giving a correct statement of the facts, and also correctly stating the law of the case as far as the law bears upon it; and if, at the same time, the Judge were carefully to point out anything that was improper in the course of a pleader's conduct, and were to hold him responsible for it, I believe that a great deal would be done towards raising the character of the Bar. At the same time, I am clearly of opinion that you must begin at the Sudder Court itself; you must begin at the highest Court, and thence go to the lower Courts.

4304. Would you require as a condition, that before any Vakeel could practise at the Bar he should pass an examination, and receive a certificate of a certain amount of competency?

Certainly. And then if you had a Bar of that character, a person who has passed through an examination, and has been put upon the list for an appointment as a Moonsiff, might be allowed to plead at the Bar; and, under those circumstances, you would be able to select your Native Judges from the Bar.

4305. In the event of such an improvement being made in the Native Bar, would the Bar be the only class from which you would select the Native Judges?

Unquestionably from those eligible to the Bar; at the same time allowing those who have been selected as Moonsiffs to plead at the Bar. There might be many who would not wish to do it; but it would be right to allow a man who had received his diploma to have access to the Bar, and then to select your men from the Bar to be Native Judges.

4306. Earl of *Harrowby.*] Would you compel always a nomination to the lowest judicial office in the first instance; if you took a Vakeel who was already in large practice, would you limit his appointment to the lowest stage in the Judicial Department?

I do not think it would be necessary, he having passed an examination. I would leave it open to the Court; and if a man was in large practice, and showed that he was competent for an appointment of a higher grade, you might place him at once in that higher grade. But I think that that ought to be done very carefully; because anything that would tend to depress those that are in the lower grade would operate injuriously.

4307. Earl of *Ellenborough.*] Would you confine the selection of Moonsiffs to those who had acted as pleaders?

No; I would confine it to those who had passed an examination. I think it is likely that those who had acted as pleaders would come in for a turn sooner on that account; as, being known to the Judges, the Judges would feel greater confidence in having one of those men, than in having one of those who had merely passed an examination.

4308. And occasionally they might feel greater suspicion of them?

It is possible.

4309. Lord *Stanley* of Alderley.] Is the remuneration given to the Vakeels at present sufficient to secure a properly qualified class of persons to act in that capacity?

I think so. If you take merely what was allowed by law, it was a very fair remuneration; but there is no pleader throughout the country who is limited to that remuneration which the law prescribed. I knew men at the Bar of the Sudder Court, Natives, who were making 5,000 *l.* or 6,000 *l.* a year. I knew one or two who were making 8,000 *l.* or 10,000 *l.* a year.

4310. Lord *Elphinstone.*] Those men would not accept a judicial appointment?

No.

4311. Is not there a great superiority in the Vakeels who plead in the Sudder Court, as compared with those in the Mofussil Courts?

Certainly; some few of the men whom I have seen in the Sudder Court are of a higher class altogether.

4312. If

J. A. F. Hawkins, Esq.

21st April 1853.

4312. If you took the Native Judges exclusively from the Native Bar, you would not confine the selection to the Vakeels who plead before the Sudder Court?

Certainly not; there are some in the Sudder Court who have had long practice; they were first for a long time ministerial officers in the Court; they have grown up with the system, and know everything connected with the Courts; they have the various constructions of the laws at their fingers' ends; and if they have, in addition to that, a facility of addressing the Court, they then leave the position of ministerial officers, in which they get 100 or 150 rupees a month, and enter at once upon the Pleader's duty; and, as I have already said, some of them are receiving an income of 5,000*l.* or 6,000*l.* a year, or more.

4313. Earl of *Ellenborough.*] Have you any Europeans practising before the Sudder Court?

We have.

4314. How do the Native Vakeels, who are making so much money, stand with reference to the Europeans?

They stand side by side with them; they are equal to them in knowledge of the law, and, perhaps, superior in quickness and acuteness.

4315. Lord *Stanley* of Alderley.] Do they plead in English?

There are one or two Native Pleaders who are competent to do so; but the great majority of them plead in the Oordu language.

4316. *Chairman.*] In what language do the Europeans plead?

A European Pleader was always obliged to plead in Oordu, if he had a Native opposed to him. We had one or two Natives who could speak the English language, and they pleaded in English, and then the European Pleader was permitted to plead in English; but he must always plead in a language which his opponent could understand.

4317. Earl of *Ellenborough.*] Do you consider the Mahomedans or the Hindoos generally to show the greater talent for the judicial office?

The Mahomedan generally shows greater aptitude for the Judicial office; the Hindoo shows greater aptitude for the Accountant's office.

4318. *Chairman.*] Which are the best as Pleaders?

Judging from those with whom I have been brought into contact, I can scarcely say; but they both get on remarkably well.

4319. Earl of *Harrowby.*] Have you ever found real eloquence amongst them, a power of appealing to strong feelings, and great facility of expression?

Only in one or two instances; not more.

4320. Lord *Elphinstone.*] How are the East Indians, as compared with the Hindoos and Mahomedans, in respect of aptitude for the judicial office?

There are not many of them employed; there are a few of them, and amongst them there are some very good officers. On the other hand, there are one or two others, who, I am bound to say, I think have a great deal more cunning than anything else.

4321. As Vakeels, how do the East Indians stand?

Some of them get on remarkably well; we have one or two at the Sudder Bar who stand side by side with the highest practitioners in the Court.

4322. *Chairman.*] Do you think it desirable to give, both to the Vakeels and to the Moonsiffs, extended means of educating themselves previously to their undergoing examination?

I think that every facility that can be given to them should be given. At the same time, I think it is as well for them to endeavour to get their education as they can, in a great measure. Certainly some of them have passed through the examination in a most remarkable manner. The most difficult questions we have got out of the Regulation Law have been put to them, and many have passed the examination with scarcely a mistake.

4323. Would you prefer leaving them to find their legal education for themselves, or would you approve of the suggestion that some legal college should be established?

J. A. F. Hawkins, Esq.

21st April 1853.

I believe it would raise the standard of qualification if you gave them a legal education, both for the Native and the European Judges; in fact, perhaps the Native Judges are better off than we are. There is no education whatever for the European, nor is there at present for the Native; but the Native has this advantage, that he is obliged to go through a severe examination as to his qualifications for the judicial office, which the European is not.

4324. Lord *Stanley* of Alderley.] Is there any place of public education at which the Natives obtain their education?

At the Mahomedan College there are lecturers upon the Mahomedan law; but their knowledge with regard to the Regulation law they pick up where they can; and, in practice, a great deal of it is obtained from the Mokhtars or Attorneys in the various Courts in the country; it is chiefly in that way that they pick up their knowledge of the law.

4325. *Chairman.*] You stated just now that you thought it desirable that the European Judges also should receive facilities which they do not now possess for acquiring a knowledge of the law; will you state what are the principal deficiencies in the training of the European Judges?

I will go back to my own experience at College. I had no judicial training at all of any kind; I should have felt myself infinitely the better afterwards, when I entered upon the service, if I had received a little education, in the way of lectures, upon the principles of jurisprudence, and if I had had some little knowledge of the law of evidence. If the young men going out had some little knowledge of the rules of evidence, and some little training in the commonest principles of jurisprudence, and, perhaps, if they were also made to learn, in this country, a little of the elements of the languages which they will be called upon to employ afterwards; and if then, upon their arrival in India, they were lectured upon the various branches of law which they will have to administer, namely, the Regulation Law, the Mahomedan Law and the Hindoo Law; and if they were then required to pass an examination as to their proficiency in the languages, not merely as to book knowledge, but for colloquial use, I believe we should have a better, and certainly a more efficient, set of men than we have now at the commencement of their service; and I believe that less injustice would often be done than is done by putting young men upon the Bench who are totally unacquainted with those principles to which I have referred.

4326. Is the examination which is made as to the ability of the candidate to speak the Native language conducted upon his leaving this country, or after a certain length of residence in India?

After a certain length of residence in India; I believe the colloquial use of the language can never be attained except in the country.

4327. What is the first appointment that you would give to such a civil servant after he has passed such an examination?

That is a difficult question; if the finances of the Government would admit of it, I would give the young assistant no employment for a time; I would make him attend the Court, either the Magistrate's Court or the Judge's Court, as a looker-on; but the probability is, that the Government will not be able to spare men for that purpose. Then if that could not be done, I would require him to pass a certain examination, which should not be of a high order in the first instance, with regard to his attainments; I would require a little knowledge of the Regulation Law, Mahomedan Law and Hindoo Law, and he should also pass through an examination as to his capability to speak the language; then he should go as an assistant to a Magistrate or Collector, and begin the service as they now begin it.

4328. Earl of *Harrowby.*] During the time that he is at Calcutta fitting himself in the language, might he not be required also to attend the Courts?

There could be no difficulty in that; that would give him an insight into what he would be called upon afterwards to do himself.

4329. Is not that time at the Presidency often very ill employed?

No doubt of it.

4330. *Chairman.*] Do you think it desirable that the Judge should have a previous training in the Collector's Department?

I think it is very desirable that he should do so; having myself gone through the

J. A. F. Hawkins, Esq.

21st April 1853.

the previous branches in the Revenue Department, I can state that I found great assistance from that when I had to adjudicate upon matters in which complex and complicated questions of land tenure are concerned; and I can scarcely think that any one could have the same confidence in disposing of questions of that kind who had not been in a Collector's Office.

4331. Are you of opinion that it is also advantageous in giving better opportunities of becoming acquainted with the feelings and character of the Natives?

Unquestionably; because, in the Collector's Department, you are brought into contact with them, for example, in making settlements in a way that you never are in the Judicial Department. In the Collector's Department, you are brought into contact with the Natives to a much larger extent than you are in the other department.

4332. Lord *Elphinstone.*] Do not you also see them in a much better light?

Yes; because you do not merely see them in a Court of Justice; but you may communicate with them in the field.

4333. Earl of *Harrowby.*] In fact, you naturalize yourself, to a certain extent, in the country?

Yes; and the people have greater confidence in you, especially if you know the language well; if you can take up a record in the language, and read it without the intervention of a Native officer.

4334. *Chairman.*] Do you consider it desirable that, after a civil servant has once been appointed a Judge, he should subsequently be removed from the Judicial Department to the Revenue Department?

Certainly not; on the first commencement of his service, let him get a knowledge of the Collector's duties, and then, when he is once appointed a Judge, let him take the regular steps in the Judicial line, without going back to the other department.

4335. Earl of *Harrowby.*] Are there any practical disadvantages attaching to the Judicial line as compared with the Revenue line, in respect either of station or emolument, so that it would be a hardship upon individuals to confine them to the Judicial line?

It certainly was the case; for instance, there was a difference in the pay of the Sudder Judges; some had a higher rate of pay, and others a lower. Now the members of the Revenue Board have a pay equal to the higher grade of the Judges: we had a case in which an officer who was a very efficient Judge in the lower grade in the Sudder Court applied for and got an appointment in the Sudder Board of Revenue, which has a higher salary; his loss from the Sudder Court was very much felt by the Government; they wished him to remain in the Sudder Court; but, having a claim to the other appointment, he objected to remaining in one by which he was to be a loser.

4336. But still the Judicial line is sufficiently remunerative to make it no hardship upon a man who has entered upon that career to confine him to it?

Not the slightest; for a Judge is higher paid than a Collector. The next step would be to the Sudder Court; if the Judges in the Sudder Court were paid equally with the members of the different Boards of Revenue, there would be no hardship upon the Sudder Judge to keep him there; it is only when the Sudder Judge gets a lower salary than a member of the Board of Revenue that he would think of applying for that appointment.

4337. Lord *Elphinstone.*] Has not the salary of the Sudder Judges been equalized?

I believe it has.

4338. And it is now equal to that of the members of the Boards of Revenue?

If so, that is since I left India; the last thing I did before I left was to write a minute upon that subject.

4339. Earl of *Harrowby.*] Would you leave it at the option of the man to select the Judicial branch, or would you leave it to the discretion of the Government to determine which career he should take?

I would leave it optional with the man; but of course the Government should have the power of exercising a veto; and they should exercise a vigilant control

J. A. F. Hawkins, Esq.

21st April 1853.

over men holding appointments in the Judicial line, in case of men getting into it who ought never to have been in it. There have been men notoriously inefficient, and who ought never to have been retained in it.

4340. Lord *Elphinstone.*] If such a person were found to hold a judicial appointment, what would you do?

It is extremely difficult to say what should be done.

4341. Earl of *Ellenborough.*] You would not recommend putting him into the Revenue line?

The best thing would be to pension him, if that could be done.

4342. Lord *Stanley* of Alderley.] Do you think that a more careful discretion should be exercised with respect to the persons sent out from this country to India?

Unquestionably. And there should also be a more rigid examination before they entered upon the Judicial line.

4343. You are of opinion that those persons who would not be fit for any situation or any employment in India had much better remain at home?

I am quite satisfied of it.

4344. Lord *Elphinstone.*] Are civil servants ever sent back when they cannot pass an examination in the languages?

There have been two or three instances in which a man, after remaining two years at the college, has not been able to pass, and has been sent home; but I believe that has not occurred in more than two or three instances.

4345. Not enough to have any important effect?

Not enough to make any impression upon the service.

4346. *Chairman.*] What is your opinion of a suggestion which has been made by several witnesses, that it would be desirable to amalgamate the Sudder Court and the Supreme Court into one Supreme Court for India?

That is a difficult question. I have considered it a good deal, and I believe on the whole that it would be advantageous; but there are difficulties unquestionably in the way.

4347. Earl of *Harrowby.*] Will you state what you consider to be the difficulties or the advantages on both sides?

If you leave the Supreme Court for its own purposes as at present, of course the administration of British law to European subjects would continue as it is. The impression upon my own mind is, that there should be an amalgamation of the two Courts; but if the law is to continue to a great extent the same as it is now with reference to British subjects, under such circumstances I almost doubt the expediency of putting the two Courts together, because I believe you would find the English law brought to bear to too great an extent, and that the result would be, that we should have too complex and too technical a system for anything that would be applicable to the Natives. If there is to be one code throughout the whole country, and all are to be brought under one code, the difficulties of the amalgamation would then be in a great measure removed, because the Judges would be required to administer this one law; and I believe that an infusion of one or two English Judges, together with the Judges of the civil service, would certainly be advantageous. It would certainly assist them in coming to right conclusions upon many difficult points that occur. It is just when we are left to the decision of complex points not specially provided for by the law, where there is the exercise of a sort of discretion, that we feel our want of legal education. Now that would be in a great measure supplied by our having one or two English trained Judges upon the Bench with us to assist us.

4348. Earl of *Ellenborough.*] Might you not have that without being amalgamated with the Supreme Court?

Unquestionably that might be done. I should very much dread too much of an infusion of English law in the administration of India.

4349. Earl of *Harrowby.*] If there was only one code for all India, would it be requisite to have the Supreme Court with the English law transplanted there?

Certainly not; the difficulty would be in dealing with European British subjects, *J. A. F. Hawkins,* Esq.

21st April 1853.

subjects, with the complaints they would make of not being put under English law.

4350. If there was only one code for all India, there would be only one law to interpret?

Only one law to interpret, and if you had Judges under those circumstances trained in the country, with perhaps one single appointment from home, that would be quite sufficient.

4351. Lord *Elphinstone.*] Is there not a great objection on the part of English settlers up the country to be placed under a code of that description?

That has been the outcry whenever you attempted to carry it out, that you are taking from them rights to which they consider all British subjects to be entitled; I believe they go by the name of "Black Acts," whenever you attempt anything of that sort in India, in order to bring the European under the jurisdiction of the Native Courts, the Company's Courts.

4352. *Chairman.*] At this moment Europeans are not under the jurisdiction of the Company's Courts?

Only in civil cases; but under the Charter Act of 1813, the Magistrates have a certain jurisdiction over British subjects, in the way of fining for petty assaults to a very small amount.

4353. Is not that considered a great hardship by the Natives when they happen to have complaints against Europeans?

Unquestionably, especially in the large indigo districts.

4354. Lord *Wynford.*] What does that state of things arise from; is it from want of confidence in the Judges?

I am not sure that it is that; but they make an outcry of that character whenever it is attempted: the thing has grown up as it is; the European has carried it out with him, and it has been allowed to remain so; and every attempt that has been made to introduce another system, and to put the European under the Native Criminal Courts (the Company's Courts) has been attended with such an outcry that it has been desisted from.

4355. Earl of *Ellenborough.*] Practically, they are under no law?

Practically, they are under no law; because whenever a crime is committed by a European, you must send him for trial by the Supreme Court.

4356. Lord *Wynford.*] Is there on the part of the Europeans any feeling of want of confidence in the Native Courts?

I believe there is; at all events they make professions to that effect to a large extent.

4357. Earl of *Ellenborough.*] Are not all the Judges of the Sudder Court equal in emolument and in rank?

They are now, I hear; when I left India they were not so; they were called Judges, and temporary Judges; the higher Judges had a certain rate of salary, while the temporary Judges got something less.

4358. The temporary Judges were appointed for the purpose of sweeping off arrears of business?

Yes; but they were in fact always permanent Judges; I never knew one removed.

4359. Do you think there would be any advantage in having a Chief Justice in the Court, who should be selected, not merely on account of seniority, but on account of superior qualifications?

That was the case for a number of years, and it answered very well; I think it would be of advantage to the Court, decidedly.

4360. Lord *Elphinstone.*] Why was that done away with?

I do not know for what reason it was done away with.

4361. Lord *Somerhill.*] When was it done away with?

It was done away with about 20 years ago, in Lord William Bentinck's time.

4362. Earl of *Ellenborough.*] Does the senior member of the Court take a sort of precedence among the others?

He

J. A. F. Hawkins, Esq.

21st April 1853.

He does not; in fact, they have got a kind of substitute for a Chief Judgeship, with regard to the duties of the Court, in this way: the correspondence relating to the administration of the law throughout the country used formerly to go in boxes from one Judge to another; that often took up much time, and led to considerable delay; the Government saw the evil of this, and they now select one of the Judges for the superintendence and management of the whole of the correspondence connected with the judicial service; they select one man from amongst the Judges, and all this correspondence goes to him, and he disposes generally of the whole of it, with the exception of opinions upon the construction of the law, which may be asked for by the subordinate Judges; those he is obliged to lay before the rest of the Judges: now this officer may be looked upon as, in fact, the Chief Judge of the Court; he certainly holds the most important office in it.

4363. When was that alteration introduced?

That system has been in existence about 15 years; I think that Lord William Bentinck introduced it.

4364. Have you seen the reasons assigned by Mr. Cameron against having a Chief Justice?

I have not; the Senior Judgeship certainly gave a standing to the Court; he was one with whom the Government could always officially communicate as the head of the Court. During the time when the appointment existed, and especially in Lord Hastings' time, whenever he had anything to consult about, the Chief Judge was always sent for; under those circumstances he held a position in the country which the Natives looked upon as one of a high order.

4365. Would it not raise the judicial service if it were known that there was such a situation at the head of it, which a man might obtain by distinguished service?

Certainly; whereas now, not having that Chief Judgeship, it is felt that there is a divided responsibility. If there were a Chief Justice, he would feel himself in a peculiar position in relation to the general character and efficiency of the Court, which can scarcely be looked for when all the Judges are upon an equality, as to position, rank and emoluments.

4366. *Chairman.*] What is your opinion as to the working of the police system?

That is the great problem of the country, how you are to improve the police of the country: it is certainly in an inefficient state, not altogether from bad laws, but from having very bad materials to work with. Generally, we have not men of such character in the country as you have at home. The agents whom we are obliged to use in the Police Department are of a very inferior order. There is not, and there cannot be, under the existing system of police the same supervision that there is on the civil side. The very fact of a Judge pronouncing a decision, brings him before you in a way which enables you to judge of him, and to know what he is. Now, you have nothing of the kind in the case of the police. Again, the police are far more removed from your eye; the Darogha, the Native Superintendent of a small police division, is removed from your eye to such a distance that you can have no efficient control over him; and he and his subordinates I believe to be underpaid; in fact, the whole system is one which does not work efficiently or well, but the improvement of it I believe to be a very difficult problem.

4367. Marquess of *Salisbury.*] Are the police sufficiently paid?

I do not think they are.

4368. Lord *Elphinstone.*] What is the pay of the Darogha?

Twenty-five or thirty rupees a month; and he may expend that in travelling expenses.

4369. Earl of *Ellenborough.*] Have you ever considered the question of giving a military organization to the police?

I have; I think it would be very useful in districts where affrays abound; but you would not get any military organization to supply the place of a village police.

4370. Do you attach value to the village police?

I do not at present; but I think it might be made more efficient. Attempts have been made to improve the village police; but I believe the evil lies much deeper than any attempts which have hitherto been made to improve it could possibly

J. A. F. Hawkins, Esq.

21st April 1853.

possibly reach. The Chokedar, who is the watchman, is a man who is taken from the lowest grades of society; he is a man who is perhaps the worst paid of any public functionary; he has very little to live upon, and, at the same time, he has great temptations presented to him by his being permitted to patrol the village at all hours of the night. He knows, on the one hand, that the police Darogha would rather not have a great many things that happen reported to him, because he fears that if all were reported, the Magistrate might consider his a badly-ordered division. At the same time, the Chokedar feels that the Native community would much rather have the presence of the thief than the presence of the police in many instances; and, under those circumstances, with the community on the one hand in this condition, with the knowledge that the police officer is not very willing to receive information on the other, there are temptations held out to him; and the police watchman is just as bad, as much of a thief perhaps as any member of the community. Now, in order to make a good police, it would be essential to have, on the one hand, police officers willing to hear what is going on, and placed in much smaller divisions, and under efficient supervision; and, on the other hand, a community willing to assist in the detection and apprehension of criminals. That must be done in a great measure by your giving some assurance to the community that the burden of assisting in the administration of criminal justice will be made to them as light as possible; that their assistance will be cordially received, and that as little will be done to put them out of their way as possible; that their evidence shall be taken when necessary as soon as they arrive at the Magistrate's station; that the distance which they shall have to travel shall be as little as possible; and that, in fact, they shall be as little molested as possible in assisting in the discharge of the criminal administration of the country. At present everything is of a contrary character. They have often an immense way to travel; they may be kept a number of days at the Magistrate's station; and, consequently, the object of every man is to keep away from giving evidence. The police Chokedar knows that; and he is at the same time surrounded with every temptation. Now, I believe, you must first remove these difficulties which affect the community themselves; and if you have them in such a position as to make them willing to give evidence and to assist you, you may then proceed to improve the rest of the system.

4371. Lord *Somerhill.*] By whom is the Chokedar appointed?

He is appointed by the villagers themselves; it is part of an ancient municipal institution. There are a great number of village servants, and the village Chokedar is one.

4372. Is he in any subjection to the police of the district?

Unquestionably; he is supposed to be entirely under the control of the police officer.

4373. Earl of *Ellenborough.*] Have the other village officers fallen into desuetude also?

I cannot say that they have. In this village community you will find the head man of the village; you will find the village watchman; you will find messengers in many places; you will find the traveller's guide, and the barber of the village; all those you will find forming part of the public servants of the village community.

4374. Lord *Wynford.*] Although these are such wretched appointments, are not the Natives very anxious to have these situations?

I cannot say that; I do not believe that any Native but of the lowest class would take a village watchman's situation.

4375. Lord *Somerhill.*] To whom would any complaints be addressed by the village or by an individual regarding either the remissness or the misconduct of a police officer?

To the Magistrate of the district.

4376. Practically, are complaints often made?

Unquestionably they are.

4377. *Chairman.*] What power has the Magistrate over the officer?

In the case of a Darogha he has the power of suspension; he had the power of dismissal (subject to superior control) when I left India.

J. A. F. Hawkins, Esq.

21st April 1853.

4378. Earl of *Ellenborough.*] If a complaint is made to a Magistrate respecting the conduct of the police, how does he proceed to investigate it?

By calling upon the Darogha or other officer to reply to it, and by examination of evidence.

4379. Do you think that the evidence is likely to be satisfactory in such a case?

Of course it is very difficult sometimes to procure evidence, but I have known instances in which police officers have been convicted upon the clearest evidence.

4380. Lord *Somerhill.*] Convicted of actual misconduct, or of mere neglect?

I have known them convicted both of actual misconduct and negligence; in fact, I have known them to go still further; as a Judge of the Sudder Adawlut I have tried cases in which officers have been convicted of employing torture, with a view to extort confessions from persons charged with offences.

4381. Lord *Ashburton.*] Do you think that in any circumstances, or under any limitations, Zemindars might be called in to assist the Government with regard either to the administration of justice or the police?

I do not think they could be called in more than they are as Zemindars; they are understood to give assistance in the way of giving information, and in assisting in the apprehension of offenders through their various establishments, but no further than that; I should doubt whether it would be politic to bring them in as Zemindars.

4382. Do you think that selected individuals might have that power assigned to them?

It would be exceedingly difficult to give them any power in any part of the country in which their own estates are situated; I do not think they have that public feeling which would enable them to discharge a duty of that kind satisfactorily.

4383. Marquess of *Salisbury.*] Will you explain why they have not such a feeling when it would be for the protection of their own property?

With regard to anything in which they were personally concerned, I do not think you could trust a Native landholder in the discharge of any important duties of that kind; they have not the same kind of moral public feeling that you have in England; and I should be afraid that it might be abused for purposes of their own if you put that power into their hands.

4384. Lord *Ashburton.*] Is there not a class of Zemindars now growing up who are very superior to the old class of Zemindars?

I cannot say that they are.

4385. Is not that the case under the improved system of education which is now going on?

You will find occasionally Zemindars about the seat of Government manifesting considerable improvement with regard to the management of their estates, and with regard to their general conduct and bearing; but I doubt whether the class of landowners in the interior will show any great improvement.

4386. Is it likely that any great improvement would take place, to any great extent, unless some reward or distinction is awarded to those who are deserving of it?

I do not think so; I think it would be a dangerous thing to put power into the hands of a Native in any part of the country in which his own property might be situated. If you could raise the whole class of Natives, as to moral feeling and principle, by a course of sound education, you would do a great deal; but I doubt whether any extraneous inducement that you could hold out to the Natives would qualify them for a situation of any kind in which their own personal interests are concerned.

4387. *Chairman.*] Are there any other points connected with the head under which we are now taking evidence, respecting which you can give useful information to the Committee, which has not been elicited by the course of examination?

I am not aware that there are any. With regard to the administration of the police in the country, I am clearly of opinion that you might form a much higher class of officers than you have at present, by going through the same process on the criminal side that you have on the civil side, namely, that of examination and

J. A. F. Hawkins, *Esq.*

21st April 1853.

and selection, so as to obtain trustworthy men and better educated men, and then appointing them to divisions as Deputy Magistrates, and having much smaller local divisions; you would thereby bring the various parts of the police district more immediately under the cognizance of an efficient man, holding the office of Magistrate. When I left India, many of the Magistrates exercised their functions over an immense number of square miles, and it may be over a million of inhabitants. Now it was impossible that a man could do justice to an appointment of that kind. But I believe you would have much greater efficiency if you had, in various parts of the district, Deputy Magistrates appointed, in whom you could confide, for carrying on the primary police duties; and the Magistrate himself, as the superintendent and head of the police at the head station, would have his hands greatly strengthened. And the people themselves would receive a great measure of benefit from this system by having a place to go to much nearer to their homes than they have at present, being obliged now to go to a station at the Magistrate's place of residence, which may be 50 miles off. Such a system, by bringing the administration of criminal justice nearer to the people's homes, would add much to its efficiency, and, at the same time, would improve the police throughout the country in a much greater degree than is generally contemplated.

4388. Earl of *Ellenborough.*] Supposing that plan were established, would not there be advantage in the Magistrate making circuits, and seeing with his own eyes how his deputies performed their duties?

Unquestionably; but then he is tied, perhaps, by being Collector also, and having all the ordinary Magistrate's duties to perform; but certainly one of his best means for the efficient administration of a district would be his constantly moving about.

4389. Marquess of *Salisbury.*] Would not that plan add greatly to the expense of the police?

Unquestionably it would, as a financial measure; all that remains for consideration: I speak of it merely as apart from the financial question; but unquestionably the financial consideration must be borne in mind.

4390. *Chairman.*] Do you believe that the efficiency of the police would be increased in a greater proportion than the expense?

I think so; but the expense would be greatly increased, no doubt.

4391. Earl of *Ellenborough.*] Do not the Chokedars cost something to the village now, useless as they are?

Yes; I suppose that every Chokedar might receive three or four rupees a month, or ought to do so.

4392. Is not that as much as a Burkundauze would receive?

A Burkundauze receives five rupees a month. As far as I recollect, that is commonly his pay.

4393. Marquess of *Salisbury.*] Would you be obliged to employ a great many more Europeans?

Or well qualified Natives; there are many of them employed as Deputy Magistrates, well qualified men.

4394. And men who may be depended upon?

I think, many of them.

4395. Earl of *Ellenborough.*] As Bengal supplies very few recruits to the army, I suppose that non-commissioned officers of regiments have rarely been employed as officers of the police?

Scarcely ever.

4396. Do you think there would be advantage in bringing them down for that purpose?

They have not sufficient knowledge of the mode of managing things in the interior, and I doubt whether you would find them efficient as Daroghas; but you could give them employments, perhaps, as Gaol Daroghas. I was in the district of Purnea when a provincial battalion there was broken up; and the whole of the station guards for the Collector's office and the Magistrate's office, as well as the superintendents of the gaol, were selected from that provincial battalion, and they made efficient officers.

4397. Lord

J. A. F. Hawkins, Esq.

21st April 1853.

4397. Lord *Elphinstone.*] Were those Bengalese or Hindostanese?
Almost all Hindostanese.

4398. Could they speak the Bengalee language?
Many of them could.

4399. If they could not speak Bengalee, would not that be an objection?
I think they would always make themselves intelligible.

4400. Earl of *Ellenborough.*] Where is the Calcutta militia recruited?
They are chiefly recruited from Behar and the Upper Provinces; but there may be some Bengalese among them.

4401. Do not they do police duties in Calcutta?
They do the police duties in the Customs' and in the Magistrate's office at Calcutta, and in some other offices.

4402. It is, in fact, a military police for Calcutta?
Merely as far as guards and sentries; they are not employed as police officers.

4403. Lord *Ashburton.*] To what district is your evidence, regarding the abuses of the police in the administration of justice, applicable?
I should say that it was pretty general; I have been employed in Bengal and in Behar, and I should say that it was particularly applicable to Bengal.

4404. Are those observations applicable to the North-Western Provinces?
I never was employed in the North-Western Provinces; I do not believe that they are so applicable to those as to Bengal; perhaps you have not the same things existing in Behar as in Bengal, because in Behar there is a higher class of people who will not put up with the same things as they do in Bengal.

4405. Then it is rather a limited district to which you refer when you speak of those great abuses in the police?
Those abuses in the police exist pretty well throughout the country, but perhaps in a greater degree in Bengal than elsewhere; Port Bengal is a very large province itself; there are a great number of districts in Bengal.

4406. When you say "throughout the country," you mean throughout the Lower Provinces of Bengal?
Yes.

4407. You do not speak with regard to the North-Western Provinces?
No, I have not been employed in them; I was never out of the Bengal Presidency, comprising the districts of Bengal and Behar.

4408. Earl of *Harrowby.*] Comprising a population of about 40,000,000?
Yes; I do not think that the fault of the abuses lies so much with the Government as with the system which we have to administer, and the agents we have to deal with; I do not wish to reflect upon the Government in the matter, because I believe that the Government have been for years anxious and desirous of doing what they could to improve the police; in order to get a higher class of agents you must incur expense; and then the financial difficulty comes into operation.

4409. Lord *Ashburton.*] Does not some part of the difficulty arise from mistakes made by former Governments, at a time when they did not so well understand the Native character and the Native institutions?
To a certain extent; but I think not within the last 40 or 50 years.

The Witness is directed to withdraw.

HENRY LUSHINGTON, Esquire, is called in, and examined as follows:

H. Lushington, Esq.

4410. *Chairman.*] WILL you be so good as to state what offices you have held under the East India Company?
For the first 12 years I was in India, I was in the Revenue Department; after my return, after taking furlough, I was in the Judicial Department, and remained in it until I left India; in 1847 I was appointed to the Sudder Court, and I remained in that, with occasional absence, until I came away in 1852.

H. Lushington, Esq.

21st April 1853.

4411. Which part of India are you best acquainted with?

The North-Western Provinces.

4412. Will you be so good as to state to the Committee what your impression is of the administration of justice in that part of the territory?

It is surrounded with difficulties of a very peculiar nature; but taking them into consideration, I think it is as good as circumstances admit of; I do not mean by that to say that there are no defects; but if one or two improvements were introduced, I am satisfied that it would be, upon the whole, satisfactory to the Natives in general.

4413. Will you state what are the principal defects to which you allude?

The principal defect, and the one which has attracted my attention more than any other, is a palpable disposition on the part of the Superior Courts, the Company's Courts, to encourage technicalities. It is of the utmost importance in a country like India, that a simple manner of transacting business and obtaining judicial decisions should be observed. Instead of that, the great aim at present, on the part of many Judges, is to follow the precedents of English law, whenever they can learn them, and to force them upon the Natives, who are particularly averse to them. I do not know any race of men in the world who have such a natural aversion to technicalities as the Natives of India have; they would rather have a tolerable decision given by an almost arbitrary Judge, a person who had no judicial qualifications whatever, than the decision of a deliberate Court, if they have to arrive at it through all those forms and technicalities.

4414. Can you state any cases which have occurred illustrating this extensive abuse of technicalities?

I have remembered one or two since I knew I was likely to be called before the Committee, which support my opinion, and I will proceed to mention them. The first that I shall allude to is a case in which a man of the name of Hutty Dooby had made himself notorious in the district of Bundlecund by procuring forgery and perjury. He was represented by the Magistrate and Sessions Judge as being the terror of the neighbourhood and the country round. At last the Principal Sudder Amin, who is a high Native Judge, found an opportunity of bringing a case home to this man; he investigated it, and prepared all the papers, and, according to the provisions of the law upon the subject, Act 1 of 1848, he sent the case to the Magistrate "for investigation." Now, Act 1 of 1848 requires that the Magistrate shall conduct the investigation "in the usual manner;" in saying that, it was intended to leave a very great latitude. The Magistrate received the papers, and seeing the very full inquiry which had been made, and that the case was perfectly clear, and that no further evidence could be required by any Court, he committed the prisoner to take his trial before the Sessions Court. The Sessions Court found Hutty Dooby guilty, and sentenced him. It was appealed to the Sudder, and the Sudder before whom this appeal came upheld the decision; but this man, Hutty Dooby, had a set of accomplices, and they appealed separately. When their separate appeal reached the Sudder Court, the Judge who heard the first appeal was absent; it came before others, and those accomplices were released, although it was admitted that there was no doubt whatever of their guilt, on the ground that the Magistrate had not taken fresh depositions; that was all. There was no complaint that substantial justice had not been done; there was no doubt as to the guilt of the prisoners; but the plan was, that the Civil Court had taken all the depositions, and had sent them to the Magistrate, and that the Magistrate had looked at the depositions, and, being perfectly satisfied, had sent them on to the Sessions Court, without taking the depositions over again. Of course Hutty Dooby, the principal offender, could not be sentenced whilst his accomplices were released, and, therefore, his sentence came under revision, and he was released too.

4415. Earl of *Ellenborough*.] Had the same course of proceeding been followed in the case of Hutty Dooby's accomplices as in his case?

Yes.

4416. Did not the difference in the decision in the two cases arise from the circumstance of the Court not having decided upon the matter of Hutty Dooby as a Court, but having left the decision of the appeal to a single Judge?

All cases that come upon appeal go before a single Judge in the first instance, and

and then, in certain cases, they are sent before the other Judges. I was the Judge who heard Hutty Dooby's appeal first; this very point was brought to my notice at the time, and I overruled it, on the ground that it was a mere technicality; that there was no precedent for it; that justice did not require it; and that to let loose a notorious malefactor upon the public upon such a ground as this was exceedingly injudicious, and very unnecessary.

4417. A single Judge of the Sudder Court having virtually over-ruled your decision by coming to a different decision in the case of the accomplices, did not that go before the whole Court?

It did go before the whole Court. My object in mentioning this case is simply to lay before the Committee an instance in which attention has been paid to technicalities.

4418. Lord *Wynford.*] All those prisoners were arraigned at the same moment?

In the Sessions Court they were, but not on the appeal; Hutty Dooby, being a rich man, appealed first; the case was sent up, and my initials happened to be put upon it; I heard it, and decided it accordingly: I know this, that when the appeal of the accomplices came before the Court, one of the Judges fully agreed with me in the opinion which I had passed before.

4419. What was the nature of the accomplice, was it before the fact or after the fact?

I forget exactly now, it made no difference in the offence of complicity; nothing whatever turned upon any difference of that kind; the question discussed was simply one of mere legal technicality.

4420. *Chairman.*] You stated that you had other cases; will you be so good as to mention them?

Another was a case that occurred in Calcutta; it was found that the interference of the police in cases of petty theft was exceedingly disagreeable to the people; the Government therefore passed a law, I think Act 2 of 1832, which prohibited the police from interfering, unless the party robbed presented a petition on unstamped paper. A theft occurred in the zillah of Buckergunge; the party robbed presented himself at the police office, deposed to all the facts of the case, and encouraged and promoted inquiry by every means in his power; the thieves were discovered, committed, and sentenced; on an appeal to the Sudder, they were released entirely, on the ground that the party who made his deposition at the police-office had not delivered in a petition on unstamped paper; that although he had given his deposition to the Thannahdar, yet he ought to have presented a petition on unstamped paper; that case occurred in Calcutta, and came to my knowledge by its being sent up to Agra for our opinion; I forget what the several opinions of the Judges were, but upon that technicality those men were released. I may mention, that after seeing this, I thought the introduction of technicalities so mischievous and so dangerous to India, that I myself proposed a resolution to the effect that "informality should not necessarily vitiate proceedings otherwise substantially just;" that resolution was negatived.

4421. Lord *Broughton.*] By whom?

By the Judges of the Courts at Calcutta and at Agra; I believe there was a majority against me at Agra, and a large majority against me at Calcutta.

4422. Lord *Wharncliffe.*] You say that the objection was, that there was not a petition presented upon unstamped paper; do you mean to say that there was a petition presented upon stamped paper?

No; he presented no petition at all; the law is to the effect that the party robbed shall present a petition on unstamped paper; amongst the comments made upon it was the very one anticipated in the question; one of the Judges inquired whether, in the event of a petition presented upon stamped paper, that would have vitiated the whole of the proceedings; of course that was more a jest than anything else.

4423. *Chairman.*] What was the other case?

Those two were criminal cases, the other was a civil case; but it equally shows a disposition to pay attention, to technicalities; and as that is the only object I have in view, I may mention that also: A. and B., two sons of a Hindoo proprietor, took proceedings against C., a party in possession of their ancestral estate;

C.'s plea was that D., the father of the plaintiffs, had sold it to him. The pleas of A. and B. then became, first, that D. never did anything of the kind; and, secondly, if he did, the alienation was invalid according to the Hindoo law. A great discussion ensued whether that mode of pleading was inconsistent and contradictory or not; it was held to be contradictory, and the proceeding of the plaintiffs was entirely thrown out. Had they had justice on their side (which I believe they had not), of course it would have been very unfortunate. It does not matter now whether the Judges were right or wrong; they were wrong in my opinion, and also in the opinion of persons far more competent upon that subject than myself. I was informed by the Advocate-general, to whom I applied, that it was "double or argumentative" pleading, not inconsistent or contradictory pleading, such as to vitiate the proceedings. I brought the opinion of the Advocate-general to the notice of the Court, and there the matter ended. Those three cases which I have mentioned are specimens of hundreds of others. Scarcely a day passes in that Court in which some important case is not disposed of in that manner; and I believe it is exceedingly mischievous and very disagreeable to the Natives of India, who, however, do not hesitate to avail themselves of it to the utmost; nothing suits them better.

4424. Lord *Broughton.*] Do you think that if the Judges had affirmed the resolution which you have just mentioned to us, and which you said was negatived, it would have altogether put an end to the evil which you complain of?

I think it would have had a very great effect if the Judges of the Calcutta and Agra Courts had adopted and adhered to the resolution that "informality should not necessarily vitiate." It was very carefully worded, although it was very short. If it was thought "necessary" to do injustice on any particular occasion, or not to do justice at all, for the sake of preserving form (as such cases might arise), then, of course, in those cases form might be respected without violating the resolution. But what I objected to was, that informalities should, without any other fault, be thought sufficient to defeat justice, and to throw out plaintiffs, and to release criminals.

4425. Lord *Colchester.*] I understood you to say that the case of Hutty Dooby, upon appeal, was decided by a single Judge, without reference to any of his colleagues?

Yes.

4426. Is that the usual course?

Yes; except in very serious cases; in all capital cases.

4427. I understood you to say that the case of the accomplices came before more than a single Judge?

That was only because the first case had been already disposed of by a single Judge. By the custom of the Court, when a case comes up in appeal, it is sent to the Judge whose turn it happens to be; and on this occasion it was found that the decision on the appeal of the accomplices was different from the decision in the appeal of the principal; and then it became necessary for it to go before a second Judge; otherwise, one Judge only would have reversed the decision of the other.

4428. *Chairman.*] Is the practice of the Sudder Court at Agra the same as the practice of the Sudder Court at Calcutta?

I believe it is; it is not necessarily the same, but the Judges endeavour to make it the same by every means in their power. They hesitate to adopt any important resolution without communicating with the Calcutta Court. For instance, even if the Court at Agra had unanimously determined upon such a resolution as I have alluded to, that "informality should not necessarily vitiate," still the proceedings would not have been finally recorded until the Calcutta Court had been consulted.

4429. Earl of *Ellenborough.*] If the Sudder Court at Calcutta had made any change in their course of proceeding, would they have communicated it to the Court at Agra for their consideration and approbation?

They might do so; they would not do so necessarily.

4430. Lord *Wharncliffe.*] Should you say that the disposition to give effect to these technicalities is in any degree attributable to a desire to lessen the labour of the Court?

Certainly not. I think, in some cases, a suspicion might be entertained that the difficulty of deciding upon the facts alarmed them, and that they thought they could

H. Lushington, Esq.

21st April 1853.

could dispose of the case much more easily by deciding upon technicalities; but that is mere suspicion. I should hope that very few gentlemen who hold the office of Sudder Judge would be intimidated by any apprehension of labour.

4431. What should you say is the predisposing cause of this disposition to adopt technicalities?

I think it arises, though not necessarily, from the very high respect which all Englishmen naturally have for the law of England, and perhaps a want of confidence in themselves, and a desire to rely upon English law and English practice, instead of learning principles, and applying them to what is required by the country; that is the only way in which I can account for it. Some men are much bolder in giving effect to their own opinions than others.

4432. Is there any power existing in the Sudder Court to rectify informalities where they are not essential?

Yes; it was because they would not avail themselves of that power that I proposed the resolution above mentioned. If the law had been that informality should vitiate, I never could have proposed any resolution to declare the contrary. It was because the law does not require that an informality should vitiate the proceedings that I proposed that the Court should acknowledge the opposite principle.

4433. Assuming that the Judges were right in their view of the questions brought before them in those particular cases, have they the power of rectifying the proceedings, so as to meet those little informalities?

They have; for instance, take the case of Hutty Dooby: it was proposed to send the case back, and to have the defect cured; but that was not done; I do not know the reason why.

4434. But the Court have the power to do that?

It was admitted that they had.

4435. Lord *Ashburton*.] What effect has this disposition to decide upon technicalities in the Sudder Court upon the inferior Courts?

It must necessarily lead them to do the same; of course the system is spread all over the country. Every Moonsiff will indulge in discussing technicalities, and they show the greatest ingenuity in doing so.

4436. Have you, practically, found it spread much?

I think so; I was not aware of the extent to which technicalities were regarded in the administration of justice till I went into the Sudder myself; and then, having so many cases brought before me from the numerous subordinate Courts, I had an opportunity of forming an opinion.

4437. *Chairman*.] With regard to the mode of taking evidence, what is your opinion?

One of the reasons why this judicial system that we have introduced into India is less successful than it might have been is, in my opinion, the want of veracity on the part of the Natives; and I think that that want of veracity has been encouraged by the enactment of Act 5 of 1840, by which the Courts were prohibited from administering oaths upon the Ganges water and upon the Koran, and were desired to take a solemn declaration instead. Now, the Natives are not truthful, to begin with, and whatever little hold their superstition gave us upon them has been thrown away by this law. I consider that to be one great objection.

4438. Lord *Broughton*.] In fact, substituting a declaration for an oath?

Yes.

4439. *Chairman*.] Will you state what is the mode of taking evidence in the Courts; first, in the Sudder Court?

No evidence is taken in the Sudder, because that is a Court of Appeal. The evidence is differently taken in different Courts; in the Criminal Court it is always taken *vivâ voce*.

4440. By the Judge, or by an officer of the Court?

By the Judge; I do not think that in the Sessions Courts any evidence was ever taken, except *vivâ voce*, unless it may be the evidence of a person who knows nothing of the case, but who comes to identify a stolen shawl or a stolen jewel; he

H. Lushington, Esq.

21st April 1853.

he may go through the form of writing down his evidence in a corner of a room, and even then he invariably repeats his deposition orally; but it is never done, except in the case of such evidence as that. No evidence to the facts of the case is ever taken in a Criminal Court, except orally, by the Judge. I am not speaking now of preliminary inquiries by Magistrates, but of the Sessions Court.

4441. How is evidence taken in the Civil Court?

In the Moonsiff's Court, I think it is generally taken in the absence of the Judge; but when the Vakeels tell the Moonsiff that there is a witness whose evidence is likely to be attended to, he is very frequently called, and specially examined by the Moonsiff. It depends very much upon the time they have at their disposal, but it is perfectly legal to have the depositions taken in the absence of the Judge, and the same before the Zillah Judge.

4442. Who takes the depositions?

They are taken by a writer, a Native officer of the Court. If the Judge himself does not ask the questions, they are taken either in the same room close at hand, or in an adjacent room; but the Vakeels, on both sides, are always in attendance; no objection is ever taken to it; the disadvantage of this course is, that the Court has not an opportunity of judging of the veracity of the witness. I consider it would be a most important improvement if all the depositions could be taken orally. There is no question about that; but if that were done, you must find an agency for it; a case that is now decided in an hour would then occupy the whole day.

4443. What makes it impossible to do that now; is it want of time or want of knowledge of the language?

Want of time; in no other respect is it impossible; it is a mere question of time; the Judges would be most happy to do it; it would be a great relief to them; every one of them would say the same thing, I am satisfied; I should be astonished if I found any Judge, European or Native, who did not agree in that.

4444. How is a saving of time effected by the present course?

Because, when the Judge hears the case now, no more time is required than that which is necessary to read over the evidence which has been taken; but if the witness comes before the Judge, the Judge has to ask him the questions himself, and to wait whilst these and the answers are being written down.

4445. Upon the Judge reading over the evidence, does not it happen frequently that the Judge is obliged to re-examine the witness himself?

The witness is not always present.

4446. Then the Judge has not the advantage of seeing the witness?

Not always; nothing can be worse than that system; it does not admit of a question; but the Judge does see the witness, because he always comes up to hear the deposition read over before he signs it.

4447. Lord *Mont-Eagle.*] If the examination was conducted orally, how would you do upon appeals to the Sudder?

The depositions would be taken orally by the Judge in the Court of First Instance, and the course would then be precisely the same as that which is now pursued in criminal trials.

4448. Is all the evidence now taken down upon criminal trials?

Yes.

4449. Lord *Wynford.*] You mean in the Judge's notes?

No; every word that the Judge asks, and every word that the witness answers, is taken down by a writer; in some instances, the case before the Court is not an appeal from the decision of a Sessions Judge, but a referred case, sent up to the Sudder for their decision. In these instances, it is absolutely necessary that the Sudder Court should have every word of the evidence before them.

4450. Lord *Mont-Eagle.*] Do the Judges read over the evidence?

Every word, as far as I know; I should have been very sorry to pass a decision upon a referred case in which any evidence remained unread.

4451. Lord *Wharncliffe.*] Is there any provision for examination by the Judge?

In the Sessions Court, the Judge always cross-examines himself; in those civil

cases

cases in which the witnesses are not examined by the Judge, they are cross-examined by the pleader of the opposite party; and no deposition can be taken unless both parties are present.

4452. Are they cross-examined in the presence of the Judge?

No; in the way in which the deposition is taken.

4453. *Chairman.*] Would it be any assistance to the Judge to have the aid of juries upon matters of evidence?

I think that the present system might be extended with advantage. At present the juries are no more than assessors; they are requested to find the facts, but the Court is not bound by their finding. I have given the jury law probably a more extensive trial than almost any other person in the country; whilst I was in one particular district I transacted a great deal of business through juries.

4454. What district was that?

The district of Futtepore, in the North-Western Provinces, and the result of my observations was, that so long as you treated them as assessors or juries, and kept them before you, the people were very much satisfied with their decisions, and approved of the system; but that they did not like their being allowed to leave the Court and give their decision afterwards; a mode of proceeding which is very seldom adopted in India, but which is legal under the jury law.

4455. Earl of *Harrowby.*] Do you mean that they can go aside and give their decision elsewhere?

No; I refer to their leaving the Court and going away altogether, and having the papers sent to them; the people do not like that; but they always acquiesced in the decisions that were actually given in the presence of the Judge; the fact is that the Natives have not sufficient confidence in the integrity of their countrymen; they know very well that these are better able to judge of the facts than the Judge himself; they are therefore very willing that the Judge should avail himself of the information which their brethren possess, but they do not like to have the case left to them entirely. I was going to mention an instance of the impossibility of trusting evidence in India. It was the case of a wealthy Zemindar, who was accused of murder, and who had absconded; at last (I do not exactly know how) I believe he was persuaded to give himself up; he was tried before me; there were about 100 witnesses; the facts of the case amongst the people were notorious beforehand, and had reached my ears. The jury was composed of Native gentlemen of very great respectability, the very best that could be procured; I obtained their attendance almost as a personal favour. The prisoner was a man of great wealth and respectability, and I did not wish him to be dissatisfied with the decision which might be arrived at. I think there were about 50 witnesses on either side, and they swore to facts which immediately contradicted each other. At the end of the trial I availed myself of the latitude allowed by the law, and cleared the Court for the purpose of asking the jury what their opinion was upon the subject; they said that every word that had been uttered on either the one side or the other was utterly false. Several of those gentlemen are in Futtepore at this moment; I believe the Principal Sudder Amin was one of them; the law officer was another: there was not the slightest hesitation among them: there was not an iota of difference of opinion. Having delivered themselves of this opinion, one of them, the Principal Sudder Amin, observed, "The fact is, we all know the truth." I reminded him that we must decide upon the evidence; but he continued, "Everybody knows the fact: neither did this man kill the deceased, nor was he a hundred miles off, as he is stated to have been; but he was in the village at the time, hiding himself in a house for fear his enemies should accuse him." Whether that was the truth or not, I do not know; but such is the evidence upon which you have to decide upon life and property in India. Unless you can improve that, all attempt to improve the judicial administration is in vain.

4456. Lord *Stanley* of Alderley.] Did you find any indisposition on the part of the Natives to serve upon juries on those occasions?

I have always been able to secure juries, but it has been by the exercise of personal and private influence. If any Native objected to sit on a jury, I had no power to compel him, but I used to request him to visit me, that I might have an opportunity of talking to him and persuading him. I was anxious to give the system a fair trial; it is, however, a most difficult thing to know how to carry it

H. Lushington, Esq.

21st April 1853.

out. The Natives certainly possess the power of determining facts better than Europeans, but they are less to be trusted than Europeans.

4457. *Chairman.*] What was their objection to serving on juries?

I am not sure that they would, on all occasions, and by all public functionaries, be treated with equal respect and attention. They knew very well that I should treat them with respect. I do not mean to find fault with any person, but the Natives are not always treated in the courteous manner that they like. As their attendance on these occasions was quite voluntary, unless they were perfectly satisfied with the reception they would meet with in Court, they would be unwilling to come; and, besides, it gives them trouble.

4458. Earl of *Harrowby.*] Is it that they are unwilling to incur odium among their neighbours, or to expose themselves to possible vindictive proceedings on the part of the persons who may be displeased with their verdict?

I remember only one instance in which I tried a criminal case with the Mahomedan law officer. I did it on that occasion upon the ground alluded to in the question. The prisoner was a member of the society from which it was necessary to draw the jurors. I knew that it would be exceedingly disagreeable to them to be called upon to give an opinion with reference to the prisoner, and therefore I availed myself of the law which permitted the trial of the case with the Mahomedan law officer.

4459. Lord *Elphinstone.*] Would you find great difficulty in getting a jury to convict a Brahmin, or a man of high caste?

No. If a member of the family to which that person was attached as Purohit, or family priest, were placed upon the jury, he might, perhaps, hesitate to convict; but I have known Brahmins tried, as well as men of other high castes, and I never detected any disposition to let them off, though I suspected it once or twice.

4460. Did you find that the employment of juries gave great satisfaction to the parties when the judgment was delivered?

They are very indifferent to it; I do not think they at all appreciate trial by jury as we do in this country.

4461. Then you think that juries are valuable rather as an assistance to the Judge than as tending to give satisfaction to the parties?

Yes.

4462. Lord *Broughton.*] Does what you have stated with regard to the want of truth in giving evidence apply to all the Natives generally, without regard to rank and position?

Natives of rank very seldom come into the Courts at all as witnesses; they avoid it, if they possibly can; therefore I have never had an opportunity of judging of them. In conversation on subjects in which they are not particularly interested, I never had any reason to doubt their word any more than that of any other race of men.

4463. But if they were particularly interested, you think that they might not be so observant of truth?

I have always admitted that the Natives of India are not trustworthy.

4464. Lord *Wynford.*] Is any distinction to be drawn between Mahomedans and Hindoos with respect to truth?

I should not draw any distinction. If a man were produced before me as a witness, and stated to be a Mahomedan or a Hindoo, I should not, on that account, think either better or worse of the evidence which he was about to give, though I might on other grounds. There are some classes who are utterly uneducated, and their evidence is perhaps of less value. There are, also, men of a very inferior condition in life who are produced as witnesses by richer and more influential men their evidence, of course, would be a little more suspicious. There is one observation which I wish to make, in illustration of the trustworthiness of evidence. It has been remarked frequently, by officers whose districts lie on one side of the Ganges River, whilst the territory of Oude is on the other, that in Oude they speak more truth now than they do in the Company's Provinces.

4465. Lord *Elphinstone.*] To what do you attribute that?

I have

I have no means of ascertaining to what it is attributable, unless it be that evidence is a means of attaining an object in the Company's Provinces which it is not on the other side of the river, or, at least, not to the same extent.

4466. Earl of *Harrowby*.] You mean, that evidence would not be regarded in the Native Courts?

Yes; it is not worth while to lie.

4467. Lord *Mont-Eagle*.] How do they decide a case in the Native Courts?

They decide it upon principles similar to those upon which Solomon decided; not by direct evidence in favour of this or that, but by some device or expedient which they can hit upon. The evidence might have been that the child belonged to either woman; but it was the mother who objected to the division of the child. It was a passion of human nature which he worked upon, and thus arrived at the truth. In this country it is assumed that evidence is true, and hence the expression that so much swearing is so much evidence, than which there cannot be a more dangerous principle in India.

4468. Lord *Somerhill*.] Is there any punishment for perjury?

Certainly, in the Company's Provinces.

4469. Have you known many instances of punishment of perjury?

Scarcely a week passes in which the Sudder has not a case of perjury before them.

4470. Cases in which convictions are obtained?

Yes.

4471. What is the punishment inflicted?

Seven years' imprisonment is the utmost that is inflicted now; sometimes as little as six months; the difference would be in the case of a person of low caste, who was evidently the tool of another, and exceedingly ignorant; that person would receive a slight sentence; whereas if a rich and educated man were guilty of perjury, he would be more severely punished.

4472. Then there must be at present a very large body of convicts suffering punishment for perjury?

It does not follow that there would be, because some of the sentences are for very short periods.

4473. But the law enables the Judge to inflict a much heavier punishment?

Yes.

4474. Do you attribute this prevalence of perjury in any degree to the light character of the punishments that are inflicted for the commission of it?

Certainly not; there is no disposition to pass a too lenient sentence where they get a proper object of punishment; on the contrary, I do not know any crime that a Court of Justice is likely to view with more detestation than perjury; but there is certainly a feeling of consideration for a man who is a mere victim and tool of another, a chumar who works from morning to night, and is sent up by his master, knowing nothing, and having no moral sense whatever. I am satisfied that no severity of punishment could check the perjuries of this class.

4475. Does not the law allow punishment for subornation of perjury?

Yes.

4476. Have you ever known cases of that kind?

Yes, many.

4477. What would be the punishment for that?

The Court would never pass a light sentence. Subornation implies plan, and reflection, and arrangement.

4478. Those punishments are found practically ineffectual?

Practically ineffectual; I do not think that anything but moral education of the people will supply the want.

4479. Lord *Stanley* of Alderley.] Do you think there has been a greater prevalence of the crime since the substitution of a declaration for an oath in giving evidence?

Yes.

4480. Are

H. Lushington, Esq.

21st April 1853.

4480. Are you aware in what way that substitution of a declaration for an oath was brought about?

No, I am not; I have heard that it was considered un-Christian on the part of a Government like that of India to allow an oath to be administered upon the Koran and upon the Ganges water.

4481. Are oaths administered in the Supreme Court at Calcutta to Europeans?

Yes; and so it would be in our Courts; we should still administer an oath to them upon the Bible.

4482. The oath is only discontinued in the case of a Native who swears upon the Koran, or the Ganges water, or any other superstitious object?

Yes.

4483. But you consider the operation of that alteration to have been very detrimental to the objects of justice?

Yes; but I do not think it would effect a complete change, even if the administration of oaths were re-introduced. The Natives were consulted upon the subject lately, before I left India. There was a circular issued, inquiring of all the Judges, European and Native, whether they thought the administration of justice had been impeded by the operation of this law, and they all, with very few exceptions, said that they thought it had; that mischief had been done; and that there was more perjury now than there had been before; but some of the Natives distinctly added, that they had no faith whatever in the depositions of their countrymen, whether they were made upon a declaration, or upon the Ganges water, or in any other form whatever; and that, therefore, they thought the measure contemplated was not of sufficient importance to make it worth while to pass it.

4484. Earl of *Harrowby.*] Was not the same complaint of perjury very prevalent before that change was introduced?

Yes, certainly; it only aided the evil.

4485. In what year was the change made?

In 1840.

4486. Lord *Stanley* of Alderley.] Have you never heard that one reason assigned for it was, that it was supposed to be objectionable in a Christian point of view?

That is the only reason that I have ever heard assigned for it.

4487. Are you not aware that oaths in this country, that are required from persons not professing the Christian religion, are administered according to the rites which they believe to be binding upon them?

Yes.

4488. Lord *Ashburton.*] Does not the practice which we follow of deciding more upon the amount of evidence than upon the value of evidence necessarily lead to perjury?

In India it would lead to perjury if they were not thoroughly satisfied now, that according to the present practice of the Courts, quantity of evidence is not of much value.

4489. Do you pay much attention to the quality of the evidence?

The greatest.

4490. How can you do that when you decide upon written testimony?

Because in criminal cases the Judge who refers it, and in civil cases the Judge who has previously decided the suit, invariably records his opinion regarding any particular witness whose evidence he considers more trustworthy than the rest; at least he is supposed to do so; and it is his duty, as far as he can, to give his opinion whether the evidence is more or less trustworthy. And if in a long list of witnesses, all swearing to the same thing, there should be one person in whom the Lower Court has faith, the Judge would certainly mention it in his decision as one of the grounds thereof.

4491. What means has he of knowing the personal character of the individuals who are brought before him as witnesses?

He does not generally; but occasions frequently happen when they may be known; for instance, the witness may be a large landowner who is known all over

the

the country; or they may have made a witness of one of the Native Judges of the Law Courts, or any of the officers of the Government who have obtained a character for truth and disinterestedness.

4492. So that in the majority of cases the Judge is totally ignorant of the character of the witnesses?

In the far greater number of cases he is ignorant of the character of the witnesses.

4493. Is it not the fact, also, that in the far greater number of cases he himself does not see the witness, or hear the witness's mode of answering in the Civil Courts?

Yes.

4494. Then how is it possible that he can judge of the quality of the evidence?

He cannot do so nearly so well as if he had the witnesses before him. But I may have misled your Lordship if I said that they are never examined before the Court; I believe that in the majority of cases they are not so examined, but I am also certain that if on any occasion there was evidence to be produced of great consequence, and if the pleaders on either side knew that that evidence was likely to be treated in the way in which it is treated in this country, the witness would be produced before the Judge, and would be cross-examined by him. Though it is legal to have the depositions written in the absence of the Judge, it does not at all follow that they are always so taken.

4495. Is it not the case that there are persons hanging about the Courts of Justice who are regularly employed to give evidence?

Not to my knowledge; no doubt there are such people, but I have never seen them, nor have I ever had anybody pointed out to me as one of them. The persons who perjure themselves are generally the dependents of the parties to the suit, and frequently of the class to which I alluded above, as not fit objects of punishment.

4496. Lord *Somerhill.*] Do you think it wise that they should have such mild punishments, if the result is found to be that they have no effect in preventing the crime?

Yes, because I am satisfied that a more severe punishment will produce no more effect than a light punishment. It is the certainty not the severity of the punishment that will do good.

4497. Is there difficulty in obtaining convictions for perjury?

Very great; it is exceedingly difficult to know what is perjury and what is not, in India particularly; you cannot trust the evidence that is given. The difficulty of procuring convictions for perjury is a common subject of complaint; yet many are procured.

4498. Perjury is so universal, that you cannot trust the evidence upon which you would convict a former witness of perjury?

It might be so.

4499. Otherwise where perjury is so common, it could hardly be difficult to convict persons of the crime?

Of course you can always prove that in the Civil Judge's opinion the man must have perjured himself, but that will not amount to proof of perjury; perhaps it would explain what I mean, and it will, at the same time, show how much these people are in the hands of their masters if I state a case. In the Futtehpore murder case already described, the prisoner produced every species of evidence which he thought likely to be of use; not only did he get men to come forward by half hundreds to swear to a falsehood, but he actually got one of his dependents to come forward and plead guilty to the murder.

4500. Was the man who so pleaded punished for it?

He died very soon after; he was a man of the Chumar caste, a very old man; whilst the police were using every endeavour to discover the murder, this man presented himself, and said, "You need not take any further trouble; I am the murderer; I fired the shot, and will give you all the particulars." He did so; and the police officer reported to the Magistrate that, in his opinion, it was a falsehood.

H. Lushington,
Esq.

21st April 1853.

falsehood. This man went about the country; he went to every Court of Justice and declared himself the murderer; he was committed and tried, but neither the police officer, nor the Judge, nor the Sudder, nor anybody else, would believe his story: a year or two afterwards he died. I mention this to show the influence which men of property have over their dependents; who, consequently, are sufficiently punished by a light sentence when they are persuaded, or compelled, to perjure themselves for their patrons.

4501. Lord *Wharncliffe.*] Was it thought that he received a sum of money for making that confession?

It was believed that he was to have a certain number of acres of land for his family.

4502. Should you say that the terrors of the penalty of an oath have diminished in the part of the country with which you are acquainted?

No, I am not aware that they have either increased or diminished.

4503. You have no reason to suppose that the religious or supernatural obligations of an oath, where it is administered, are less binding now than they were in former times?

No, as far as I know; but I have had no opportunity of judging for the last 12 years. I do not think they have the slightest hesitation in perjuring themselves under the present system.

4504. Apart from moral principle, is there not a sense of the supernatural obligations of an oath, and a fear of the consequences of violating it?

Yes, to this extent, that the Natives will respect an oath taken on the Koran, or Ganges water, more than an oath taken without them. There is no really efficient remedy except moral education; by which, I mean, moral education in contradistinction to improving their intellectual acquirements.

4505. Bishop of *Oxford.*] As far as we know of the state of India, has not perjury always been almost universal in such cases?

I believe it has always been very common.

4506. Earl of *Ellenborough.*] How would you set about giving a moral education in contradistinction to what is usually understood by the word "education?"

That is a subject on which I have not thought sufficiently to give any opinion; I believe a system might be devised.

4507. Lord *Elphinstone.*] Do not the Supreme Court still administer oaths upon the Koran and upon the Ganges water?

I believe not. There is one fact generally acknowledged in India, which perhaps will illustrate this subject, namely, that in the Settlement Courts or Cutcherries, which are held by the inferior revenue officers, who are sent out to particular places on special duties connected with land, the evidence which those persons obtain is far better than any other that is known in India.

4508. How do you account for that?

They are out of the atmosphere of Courts; they have not been tampered with; and they are in the presence of their friends and their families.

4509. Earl of *Ellenborough.*] Every man about them would know that they were telling an untruth if they did so?

Everybody about them would know it.

4510. Lord *Elphinstone.*] Does not that show a certain moral sense?

It is rather simplicity and want of object; they are not prepared, and they would suffer in the estimation of the people about them; they are very much alive to shame, though they have little sense of morality; they are ashamed of being detected.

4511. Lord *Broughton.*] They are ashamed of being found out?

Yes.

4512. Earl of *Ellenborough.*] In the case mentioned by you, in which 100 people committed perjury, 50 on the one side and 50 on the other, were any of the men punished?

No.

H. Lushington, Esq.

21st April 1853.

4513. Was any attempt made to get any proof in order to punish them?

It would have been perfectly futile; the Courts have endeavoured, to an extent which has produced interruption to business, to carry on inquiries into forgery and perjury; but if carried on as they might be, they would materially interfere with the ordinary business of the Courts.

4514. *Chairman.*] What is your opinion of the aptitude of the Natives for judicial offices?

I think they are very efficient; they have ability certainly to any extent, and I do not think ill of their integrity; no doubt when put into those offices they have acted with more uprightness than one could suppose from the general opinion which is entertained of their integrity. I remember that in one district to which I went, and where I was for several years, it was notorious amongst the people (I do not allude to the European functionaries), that every one of the Native Judicial Officers in that district was honest; the people gave them all a high character for integrity. I have been in five different districts, and I never heard so much said in favour of the Native Judges as I did about that time in this district.

4515. Do you see any possibility of improving their judicial training?

Yes, I think that both the Europeans and the Natives would be very much improved by some judicial training more than they have now.

4516. Lord *Wynford.*] Does not their high character arise from the certainty of European revision of their proceedings?

No doubt that has a great effect.

4517. You could not keep those Native Judges honest in their judgments, unless there was a certainty of their being corrected afterwards by European Judges?

To a certain extent that must be true as a general proposition; control always will have an effect of that kind.

4518. *Chairman.*] What are the improvements that you would suggest with reference either to the judicial training, or the mode of appointment of the Native Judges?

The only suggestion that I am prepared to offer, with regard to the training of the Natives, would be the establishment of some kind of school in which they might receive a higher legal education; but perhaps that is hardly required, considering that they begin their judicial duties, not like the European Judges, but in the lowest grades; they are generally older when they begin than the Europeans are, and they frequently have had more judicial education than the Europeans, because they have to pass through an examination, and a very strict examination, in the Company's Regulations, and in the general principles of law.

4519. Would it be possible to select Judges from the Vakeels?

Yes; I think a resolution has lately been passed that the Bar shall be a step to the Bench; that the best pleaders shall be taken from the Bar and put upon the Bench; and it is done to a great extent now.

4520. Earl of *Harrowby.*] At Agra?

At Agra; and I believe the same has been done in the Lower Provinces; but I do not know.

4521. Are the Vakeels men of such a character as to be fit to occupy the Bench?

At Agra there are always a few Vakeels who are fit for the Bench, and who invariably refuse to be promoted to the Bench.

4522. Do the best Vakeels refuse to go to the Bench?

Yes, on account of the inferiority of the emoluments.

4523. Are those who are appointed as Native Judges obliged now to begin with the lowest step of the judicial ladder?

Yes; I believe the Government have the power to set that rule aside; but they very seldom exercise it.

4524. Earl of *Ellenborough.*] Does not that rule practically exclude from the Judicial Bench all the most successful of the Vakeels?

That would be its natural effect; but it is only one or two who are thus excluded;

H. Lushington, Esq.

21st April 1853.

excluded; that is because they make more money by remaining as they are; the Moonsiffs not being very highly paid.

4525. *Earl of Harrowby.*] What is about the highest income derived by any of the Vakeels at Agra?

They have told me themselves that their emoluments sometimes exceeded those of the Judges.

4526. Do you mean the European Judges?

The European Judges; there was a Vakeel of the name of Mahommad Shuffee, who told me that his income was larger than a Judge's salary.

4527. How much was it?

I think he said he sometimes got as much as 4,000 rupees in a month.

The Witness is directed to withdraw.

F. J. Halliday, Esq.

FREDERICK JAMES HALLIDAY, Esquire, is called in, and further examined as follows:

4528. *Chairman.*] ARE you able to give any explanation to the Committee with regard to the change that was made in 1840 as to the manner of taking the evidence of the Natives, by substituting a declaration for an oath?

There had grown up, gradually, an opinion that the evidence of Natives was likely to be as good without oaths as with oaths. It had been seen that the generality of Natives, and particularly all the more respectable portion of them, Hindoos as well as Mahomedans, but especially Hindoos, anxiously avoided being brought into our Courts, subject to the possibility of taking an oath; so that it had long been a rule of law that Judges had a discretion to exempt persons of respectability from taking oaths at all, and were empowered to examine them upon a mere declaration instead of an oath. The fact was, therefore, that the question of oath or no oath was, in every instance, at the mere discretion of the Judge who presided, whether European or Native, whether young or old, whether experienced or the contrary. This of itself was thought to be an evil, especially when such great importance was attached to the privilege of exemption by the Natives themselves. Upon inquiry as to the reason for this desire to escape taking an oath, it was ascertained that, amongst the Hindoos, the mere fact of being sworn on the Ganges water, which was the mode of administering the oath that we had adopted from the beginning in the Courts of the Company, as well as in the Supreme Courts administering the English law, was especially horrifying to the superstitious minds of the Natives; for this reason, that, according to the Hindoo notion, an accidental, and even an unintentional falsehood, involved exactly the same ultimate penalties if delivered upon the oath of the Ganges water as if the falsehood was intentional and flagrant. Under these circumstances, it was obvious to the Government that the continuing to administer this oath, at all events, was often likely to be made an instrument of oppression, and sometimes to be oppressive through the mere ignorance of those who had to administer the law, and who might often have to trust to the information of the officers round them as to the position in life of a witness, and the propriety of exempting him, or otherwise; so that, on the whole, it seemed right that such a method of administering oaths should be got rid of as regarded the Hindoos. As regarded the Mahomedans, precisely the same reasons did not exist. But it has been seen throughout India, in most instances, and in this amongst others, that the Mahomedans are apt to imbibe something of the same sort of superstition as exists among Hindoos. The Mahomedans had imbibed so much of the Hindoo superstition with regard to an oath, that they had a strong objection to taking it. They considered that there was personal degradation involved in it, and they desired to be exempted from it whenever they could obtain exemption. With them, as well as with the Hindoos, the Judges had been empowered, from the commencement of our system, to exempt persons of respectability from the necessity of taking an oath; so that, as far as that reason existed, there were the same grounds for doing away with oaths amongst the Mahomedans as amongst Hindoos. Further, an opinion at that time was very prevalent amongst the officers of the Government, that such Natives of India as were likely to give true evidence on oath were just as likely to give it without an oath; and that, on the other hand, those who would give false evidence without an oath, would not be restrained by an oath from giving false evidence when their interest led them to do so. So that the administration of oaths seemed to be at once oppressive, dangerous and unnecessary. Those were, as far as I am aware, the reasons for the law which did away with oaths in India.

4529. Lord *Stanley* of Alderley.] Have you any reason to think that the effect of that alteration has been to make the character of the evidence less trustworthy than it was before?

I have not myself had an opportunity of administering justice, not having served as a Judge in any capacity since the law was altered; but from opinions I have heard from Judges, European and Native, I should not be disposed to come to the conclusion that the doing away of oaths by law in India has had any effect whatever, one way or the other, upon the credibility of evidence; at the same time, it may have had, and probably has had, considerable effect in doing away with the unwillingness of respectable witnesses, from whom you are more likely to get the truth than others, to come into our Courts as witnesses; and in that indirect manner it probably may have improved the value of evidence.

4530. In the event of a Christian Native having to give evidence in Court, is he put upon oath, while a Native Hindoo or Mahomedan is allowed to substitute a declaration?

In all the Courts, both those of the Company and those of the Crown, Hindoos and Mahomedans are exempt from oaths, while Christians, whether European or Native, are sworn in the same manner as in England. I may mention that about the same time that the Government passed this law for doing away with the necessity for oaths in the Courts of the Company, the Supreme Court at Calcutta, and I believe at the other Presidencies, acted on the powers given them by Charter, at their discretion to exempt Hindoos and Mahomedans from the necessity of taking oaths as witnesses; so that the practice in the Queen's Courts came to be the same in that respect as the practice in the Company's Courts.

4531. *Chairman.*] Have you anything to state with respect to the mode of taking evidence in the Courts?

With regard to the method of taking evidence, the law was in process of alteration when I left India, and I have no doubt by this time it is altered; so that all the Judges, whether of the Civil or Criminal Court, will be obliged to take evidence themselves, with the witnesses before them, as they do in this country.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday next,
Two o'clock.

Die Martis, 26° Aprilis 1853.

LORDS PRESENT:

The Lord President.
The Earl of Harrowby.
The Earl of Ellenborough.
Lord Elphinstone.
Lord Wodehouse.
Lord Mont-Eagle.
Lord Colchester.
Lord Wharncliffe.
Lord Wynford.
Lord Ashburton.
Lord Stanley of Alderley.
Lord Monteagle of Brandon.
Lord Broughton.

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

H. Lushington, Esq.

26th April 1853.

HENRY LUSHINGTON, Esquire, is again called in, and further examined as follows:

4532. *Chairman.*] HAVE you any observations to make with regard to the evidence which you gave on a former day?

I have. When I stated that a resolution had been proposed in the Agra Court, declaring that informalities should not vitiate proceedings, otherwise just, I said it was rejected by the Calcutta Court and by the Agra Court, I was in error in that respect. It was approved by the Agra Court, but rejected by the Calcutta Court; but although I had a majority there, I thought it was a change of too much extent and too great importance to introduce without unanimity. I wish also to make a few observations with regard to the subject of evidence. I was asked whether I knew the grounds upon which Act 5 of 1840 had been passed; I said I did not; I have since had an opportunity (within the last half hour) of seeing the papers, with the written opinions recorded before the passing of the law, and I observe that the grounds were those which were mentioned in this room subsequently to my examination; one of them is, that the Natives consider it a crime to take an oath upon the Ganges water, whether they speak truly or whether they speak falsely.

4533. Was it not rather that they considered it a crime to tell an unintentional falsehood when swearing upon the Ganges?

It may have been; at all events it comes nearly to the same thing, though the opinion is more reasonable as put in the question. I believe, however, indeed I am certain, that that is not an item of popular belief. That the Pundits gave their opinion as stated, that it is to be found in some of their books, and that some castes and families may even regard an unintentional falsehood as a crime, I believe to be perfectly true; but it certainly is not an item of popular belief, and it does not apply in any degree to Mahomedans. Another argument which I find in the papers is, that respectable Natives were deterred from entering our Courts by fear of taking the oath upon the Ganges water. They are deterred from entering our Courts by the objection they have to go there at all, not by any particular fear they have of taking an oath upon the Ganges water. I speak now of what I have observed in practice, not with any reference to theory, or to what has been written by other persons.

H. Lushington,
Esq.

26th April 1853.

4534. What do you consider the objection to be which influences them in avoiding the Court?

I have asked them over and over again what would induce them to come into Court. They have denied that they have any objection to come in on account of the oath in the Ganges water; nor could they avoid such denial, because there was a provision in the law which enabled the Magistrates to take the depositions of persons whom they considered respectable upon their solemn declaration, if they thought fit to do so. But they have complained to me generally of the uncourteous treatment which they were likely to receive, not from the Court, but from the menial officers of the Court. I remember one Native gentleman of great respectability at Moradabad telling me that he would be very happy to come and give evidence in my Court whenever I pleased, if I could only secure him from being pulled into Court by the Chuprassies; they are servants of the lowest grade; and if I would allow him a chair during the time his evidence was being taken. I said I would not hesitate to do so if occasion required.

4535. Do not the Judges consider it their duty to prevent the officers of the Court from behaving in an unbecoming manner to Natives of rank?

They do it when the Judge sees nothing of it; the generality of the witnesses are persons who are not at all sensitive upon these subjects, and the Chuprassies are not particular as to the manner in which they bring them into Court. As soon as one witness has given his deposition, they call out the name of another, and somebody runs to fetch him, and sometimes they bring him quicker than he likes. If they made the slightest complaint, every attention would be paid to their feelings. I do not mean to say that is the common practice, but such was the answer of that Native to me; I was wishing to give instances rather than opinions.

4536. Lord *Monteagle* of Brandon.] Probably you have seen in an English Court of Justice the strict rules of courtesy set aside by the Crier of the Court and the officers, in their treatment of witnesses?

To a greater extent than in India; the Natives of India are, upon the whole, the most courteous people in the world.

4537. But in proportion as they are courteous themselves, are they not sensitive to any neglect?

Certainly.

4538. Lord *Elphinstone.*] Is there not some stronger feeling than the mere fear of experiencing discourtesy, which makes the Natives unwilling to come into our Courts?

I have no doubt that they dislike coming; I have already stated, that they have some objection to coming into Court to take an oath on the Ganges water, although their aversion is not entirely owing to the observance of that ceremony; their objection is to appearing in a Court at all. They consider it a degradation to be treated in the same way as inferior persons are treated; they dislike doing that which common people do; if it were even advantageous and agreeable to them, they would object to it upon that score. Influenced by similar feelings when they come to visit you privately, men of respectability expect to receive a chair, and if they do not receive a chair, they never come again; they do not distinguish between your official and your private capacity. Another alleged reason for passing Act 5 of 1840 is, that the Natives speak untruly, whether they are sworn upon the Ganges water and the Koran, or not; and that therefore it is "unnecessary" that they should take any oath at all. I do not admit that; I have said from the beginning that the taking an oath on the Ganges water and Koran has some effect upon their superstitious feelings; and whatever advantage, in the search after truth, could be derived from that superstition, is thrown away by not administering the oath on the Ganges water and Koran. I will conclude these observations by mentioning an exclamation which I have heard, not once, but very frequently made in my presence by witnesses who were deposing to facts which I was not inclined to believe. When pressed on the necessity of speaking the truth, they have repeatedly exclaimed, "If you were to put Ganges water into my hand, I should tell you the same thing." Now, if they do not feel that that would have extorted the truth from them more powerfully than a mere declaration could do, why do they make that exclamation? I consider that whatever reasons the Government may have had for passing that law, it was a wrong step; I am satisfied that the law was

passed

passed with the very best intentions by the Government of India, but I think that in this instance they were wrong.

4539. Lord *Monteagle* of Brandon.] Upon the whole, which would you rely on more in the administration of justice in India in seeking the truth, upon the punishment of perjury or upon the chance of calling into exercise some superstitious feeling which might act upon the individual in the particular case?

Upon the latter; I would rather trust to the chance or to the hope of discovering some particular influence over him which would induce him to speak the truth than to the punishment of perjury. Very great efforts have been made to punish perjury; some Magistrates and Judges have spent a great deal of their time in endeavouring to discover, in cases in which perjury must have occurred on one side or the other, which were the parties that had perjured themselves; and to such an extent have they so employed themselves, that it has sometimes interfered with the public business; and not only that, for some Magistrates who have paid this great attention to the subject have been told that (as it was thought) they went too much out of their way in doing so, and that they should let the matter rest till it was brought before them in due course; at the same time, the Magistrates are better able to discover perjury and forgery than the Judges; and it was in order to give the Civil Courts the advantage of their ability in respect of the latter offence that the Act of 1848 was passed, to which I alluded in my former examination.

4540. *Chairman.*] What is your opinion of the present state of the Bar?

In almost every Court there are two or three very able pleaders, men who are fit for anything, and whose labours are recompensed by the receipt of very large emoluments; those men are competent to anything which they are called upon to perform; of late the rule has been to look to the Bench as the reward for their services at the Bar, but the superior Vakeels do not desire such promotion; they will not consent to become Moonsiffs; they might consent to become Principal Sudder Amins.

4541. Lord *Broughton.*] What are those Vakeels chiefly; are they Natives or English?

Those of whom I speak are Natives, and I am speaking of the North-Western Provinces.

4542. *Chairman.*] Would you encourage English pleaders?

Yes, I would, certainly; I think they would give very great assistance to the Judges.

4543. Lord *Mont-Eagle.*] Do you mean English pleaders or Natives pleading in English?

I mean rather Englishmen pleading in Hindostanee, though the language is of minor importance; I wish to give the Judges the advantage of the knowledge of law which Barristers possess, yet I should be very far from wishing to introduce them, as they are now, to plead according to the forms of English law before the Native Courts.

4544. But in the English language?

They might be permitted, under certain conditions, to plead in English, but I would not introduce English as the language of the Court; certainly not at present; it might be done many years hence; but at present it would create the greatest confusion, and would be exceedingly disagreeable to the Natives.

4545. Lord *Monteagle* of Brandon.] That applies to the North-Western Provinces?

Yes; I wish my observations to be understood as having reference chiefly to the North-Western Provinces.

4546. You see no objection, either at the present or in future time, to the permissive system which prevails in Bengal, where, if the parties themselves on both sides are willing to plead in the English language, they may do so, and you think that every facility should be given them for doing so?

Certainly. I am perfectly sure that if at the present day, or rather when I was in India, two pleaders of the Supreme Court had presented themselves, one on each side, and requested permission to plead in English, they would have been permitted to do so. There was a case in which an English gentleman pleaded his own cause, and although he was informed that it was contrary to the custom of the Court, and that

H. Lushington, Esq.

26th April 1853.

that everything which he said must be translated into the Native language, in order to be made intelligible to the pleader of the other party, still he, in point of fact, spoke more English than Hindostanee, and pleaded his cause then and there.

4547. Earl of *Ellenborough.*] Was that in Jotee Persad's case?
No.

4548. Was not the same thing done there?
No; in that case there was a regular Barrister employed.

4549. Was he not first of all told that he was to speak in Hindostanee?
That was in the Magistrate's Court; I heard that he was told to speak in Hindostanee, and that the rule was not enforced; when the trial came on in the Sessions Court he was allowed to speak in English, and in that particular instance it is to be regretted that the permission was given.

4550. Lord *Wynford.*] If you encourage those English lawyers to plead in the Mofussil, would not they, every now and then, embarrass the Judge, in consequence of his want of knowledge of the technicalities of English law?
Yes.

4551. Would not that give the English Barrister a great advantage?
No advantage would be given to one side over the other in civil suits, because the Barrister would not be allowed to plead in English, unless the opposite party had an English Barrister also; but some inconvenience might be felt in criminal trials, such as that of Jotee Persad, for fraud and subornation of perjury. In that case, the Barrister who was employed by the prisoner, and who was allowed to plead in English entirely, as an indulgence, brought forward various points of English law which had nothing whatever to do with the case, objections which most of the Indian Judges would have overruled immediately, and some of which, I have been assured, were not supported by even English law; the consequence was, that he overwhelmed the Court with English technicalities, and the parties accused were acquitted. On the other hand, the benefits which an English lawyer is able to confer upon Indian jurisprudence have been illustrated by Mr. Macpherson's valuable Treatise on Civil Procedure: when I left India, that work was received as a legal authority throughout Bengal and the North-Western Provinces.

4552. Are you aware that here, in England, there is a license allowed to a Barrister before a Judge in Court, which he would hardly exercise before a Bench of Magistrates at the Quarter Sessions?
I was not aware of it. I have heard Barristers assume a great license of language in the Courts.

4553. *Chairman.*] Will not the character of the Bar everywhere depend, to a certain degree, upon the character of the Judge?
I do not think that it would necessarily be so. The Bar may contribute very much to the improvement of the Judge; and that is what I have in view when I advocate the employment of Englishmen as Vakeels; they have a knowledge of English law, which would be very useful to the Judge, provided the Judge was at liberty to adopt it or not, as he thought fit.

4554. Lord *Mont-Eagle.*] Do you mean that the Judge ought to have the option of adopting the English law or not in every case?
Yes; he has it now, in all cases not provided for by the written law; practically, we exercised the option every day: whenever a difficult point arose, if we could find no sufficient precedent in any case which had occurred in the Sudder, we almost invariably sent it down to the Advocate-general to ascertain how the English law bore upon the point, with a view to adopting it or not, as we thought fit.

4555. Earl of *Ellenborough.*] Do you think that the opinion of the Advocate-general was always one that you could entirely rely upon?
It was the only one we had to guide us; we were obliged to take it as an enunciation of English law; and beyond that, the Advocate-general gave no opinion.

4556. *Chairman.*] What is the feeling of the Natives towards the Supreme Court?
In the North-Western Provinces, the Supreme Court is exceedingly unpopular. I think

H. Lushington, Esq.

26th April 1853.

I think I should not speak too strongly if I said that they entertain an aversion to it, and a fear of it.

4557. Lord *Elphinstone*.] Do not they know very little of it?

Very little indeed; whenever they do see it in operation, they see that it works for evil; they regard it as an unknown, mysterious and mischievous engine, of which their very masters are afraid. They seldom see it at work; but whenever they do, the knowledge they acquire is not at all calculated to improve their opinion of it. I remember having, on one occasion, a very good opportunity of forming an opinion as to the feelings of the Natives towards the Supreme Court: an emissary from that tribunal had come up as far as Rohilcund; he made his appearance in the Cutcherry of the Tahsildar in a Dooly (a vehicle in which women are ordinarily carried), and, rushing suddenly out of it, arrested the wrong man. The Tahsildar whom he had intended to arrest escaped, and hid himself. He was a man of very great respectability, a Syud, and he took refuge in a Syud village, where he knew that no authority would be likely to reach him. The affair made a great noise in the Province; the Natives talked a great deal upon the subject, and, as they always do, referred to the Magistrate and the Judge, anxiously inquiring who and what the bailiff might be, and whether they were to be subject to a repetition of his undesirable visits.

4558. Lord *Elphinstone*.] What right could that emissary of the Supreme Court have to arrest anybody there?

I believe that some person in Calcutta had filed an affidavit in which it was stated that this man, this Tahsildar, had some share in a commercial firm at Calcutta; therefore, by the doctrine of constructive inhabitancy, he was declared to be within the jurisdiction of the Supreme Court, and a person was sent up to arrest him: I mention the occurrence merely to show the opportunities that I had of ascertaining the feeling of the people, for it made a great noise at the time, and was talked of by all parties, rich and poor, Hindoo and Mahomedan. The code was immediately brought to the notice of the Lieutenant-governor of Agra, who subsequently sent it down to Calcutta.

4559. Earl of *Ellenborough*.] In what year was that?

I think it was in 1834.

4560. Lord *Mont-Eagle*.] Where was the difficulty of arresting a man in this Syud village?

Syuds are less likely than other classes to submit to doubtful authority, especially if they expect to be supported by the Magistrate.

4561. That is in our territories?

Yes; I do not mean to say that the Magistrate would not have had the power to arrest the Tahsildar, but he would not have given to the bailiff any assistance more than was necessary for the protection of his person.

4562. The Magistrate could have done it?

Yes, immediately; it is a very strong government.

4563, *Chairman*.] Is the objection of the Natives to the Supreme Court founded on a belief that the proceedings of the Supreme Court are tyrannical, or is it on account of the expense of the proceedings?

They object on the ground that they are tyrannical, so far as they know. The more educated Natives of course would know better, they would know that the Judges of the Supreme Court were no more tyrants than any other Judges; but the masses draw their conclusions from what they see; they see that their own officers are subject to this authority, and they cannot understand the principles upon which it is exercised.

4564. What is the jurisdiction which the Supreme Court exercises over Magistrates with reference to their official acts?

That jurisdiction I consider to be as dangerous as anything can be to the police of the country; the Magistrates are afraid of acting on account of the responsibility they are under to the Supreme Court; I believe the Government were fully aware of that when they passed Act 16 of 1850. That law declares that no judicial officer shall be liable to be proceeded against for acts done in his official capacity, with or without jurisdiction, provided he believed in good faith that he had jurisdiction. In defiance of that law the Supreme Court have interfered and have passed

passed decisions, giving damages against Magistrates who have acted, as they thought, properly; and I think the effect of that is very bad. The very case alluded to just now furnishes a signal instance. The Barrister who defended Jotee Persad became security for the appearance of the accused in the Court of the Agra Magistrate. This Barrister and Jotee Persad had previously taken themselves away from the North-Western Provinces, where the investigations were going on, and had proceeded to Calcutta; the Magistrate therefore was obliged to take recognizance and security for Jotee Persad's appearance through the Supreme Court: the recognizance was forfeited. Jotee Persad did not arrive at the proper time at Agra; the Magistrate declared the security forfeited, and, on payment being refused, proceeded to the attachment of some articles of wearing apparel. The Barrister complained that the Magistrate had no authority to make this attachment, and he was informed that if the act was illegal, he could procure a reversal of it in 24 hours, by appealing to the Sessions Judge, whose Court was in the same town: he would not do so; he preferred to wait till the proceedings were all over, and then retaining the grievance, to prosecute the Magistrate in the Supreme Court for what he had done; that is to say, for attaching his property in payment of the forfeited security. Although the Magistrate of Agra pleaded, in the first place, that he had not acted illegally, to the best of his judgment; and secondly, that even if he had, this Act 16 of 1850 protected him, the Court declared that the Act was illegal, and that the law did not protect him: he was cast in damages. If a Magistrate is subject to such treatment as this, it is impossible that he should act with vigour or independence in India.

4565. Lord *Monteagle* of Brandon.] Will you suggest what greater protection it would be expedient or wise to give to a Magistrate for acts connected with his magisterial functions than is given by the Indemnity Act to which you have alluded, and which is so wide in its terms and its intentions?

It is with great diffidence that I express the opinion which I now must express. The Act is perfectly sufficient, in my judgment; but it appears to me that the decision of the Supreme Court was opposed to the law: so long as that, in that instance, precedent remains in force, the Act is not sufficient for the protection of Magistrates.

4566. Do you carry your views upon the subject so far as to say that there ought to be a general indemnity, so as to protect every Magistrate under all circumstances with regard to all acts done by him in his magisterial duty?

He is always responsible to the Government. The Government may dismiss him from the service, which is utter ruin; a punishment quite severe enough for any act done "in good faith."

4567. But beyond that, may there not be a wrong to an individual; and, admitting to the fullest extent the right of the Magistrate to protection, when acting *bonâ fide*, might there not be established, for the benefit of third parties, a power of obtaining redress for any wrong committed?

Certainly, if he acts knowingly in an improper manner; but the law protects him if he acts honestly. I do not think it would be wise, in the present state of India, to make Magistrates responsible to individuals for mistakes. The opinion of the Judge, in the code under discussion, I believe was, that it was necessary for the Magistrate to have good grounds for the belief which he entertained.

4568. Are you aware that the indemnity which you have relied upon as given to Magistrates in India is a much larger indemnity than Magistrates obtain in this country?

It is absolutely necessary that there should be a much larger indemnity in India than in England. At Calcutta, and in the neighbourhood of Calcutta, there have lately been frequent dacoities; and as I was travelling down the country last year, I happened to fall in with the Superintendent of Police, and I observed to him that if we had had these dacoities in the North-Western Provinces, we should have put an end to them much sooner. His answer was, "Not if you had a Supreme Court at Agra."

4569. Lord *Wynford.*] What do you consider was the cause that the Barrister appealed to the Supreme Court at Calcutta in preference to the Sessions Court which was sitting in the same town?

I attribute it to his wish to gain a victory over the Magistrate; to make use of

H. Lushington, Esq.

26th April 1853.

the Supreme Court as a means of satisfying himself. It could not have been to try the point, because he might have done that without delay, trouble or expense at Agra, and without forfeiting his right of ultimate appeal to the Supreme Court.

4570. And that he conceived that he would attain that object more easily by applying to the Supreme Court than by applying to the Sessions Court at Agra?

Of course, because the Supreme Court could award damages. He might have appealed the next day to the Sessions Judge against the order with which he was dissatisfied, and the Sessions Judge would have reversed it, if he thought proper to do so, but that was not his intention; he was perfectly satisfied that the Magistrate should retain the articles of wearing apparel, provided that he retained his power of prosecuting and getting damages in the Supreme Court.

4571. Earl of *Ellenborough.*] He took only nominal damages, did not he?

I believe so; I do not attribute to him any desire to profit by the transaction. The Government paid them, whatever they were, and the costs, which are sometimes very heavy.

4572. *Chairman.*] Has any great inconvenience been experienced from such interference?

Yes. I can mention another instance of the same kind, which occurred lately, and is equally illustrative of the nature of the interference of the Supreme Court. Some proceedings had taken place before an Assistant Magistrate in the Court of the 24 pergunnahs, close to Calcutta; and one of the processes which issued, either against the person or the property of a Mr. Gaspar, was sealed and signed by the Magistrate; the Assistant Magistrate who had signed the original order for the issue of this process did not happen to be in the way at the time, or was engaged in some other matter, and the document itself was attested by the Magistrate, Mr. Mytton, agreeably to the uniform practice on such occasions. An action was brought on the part of Gaspar, in the Supreme Court, and damages were given against the Magistrate, on the ground that the subject-matter of the process "was not present to the judicial mind of the Magistrate." I believe those were the very words; and for this he was required to pay 4,000 rupees, in the shape either of costs or of damages. The Government paid them. If the Government did not pay such costs as these, no Magistrate would be able to act, or would dare to act.

4573. Earl of *Ellenborough.*] What was meant by the expression, "that the facts of the case were not present to the judicial mind of the Magistrate"?

I explained above, that the case had been before the Assistant; consequently, the grounds upon which the process issued, whatever they were, were known to the Assistant, and not known to the Magistrate. The proceeding was just the reverse of what ordinarily happens in India; for there the superior officer, having signed the original order himself, leaves the mere processes of the Court to be signed by the inferior officers, who affix the seal of the Court, and sign their own names; but in this instance the superior attested the document, the preparation of which had been ordered by his Assistant.

4574. *Chairman.*] Did it mean that he had made an order in a case which was never before him?

No, it could not mean that, because the order was not granted by him at all; he only attested the process that was issued by the Court.

4575. Lord *Wynford.*] It was purely ministerial duty?

Purely ministerial. Generally, the Magistrate's orders are sent to be executed by the Assistant; in this case it was just the reverse.

4576. Lord *Mont-Eagle.*] The man who heard the case decided it virtually?

He did.

4577. *Chairman.*] How far do you consider the Indian Judges to be practically independent?

At Agra we considered ourselves practically independent; but I do not think that Judges ought to be subject to removal at the will of any one individual whatever. No undue interference was ever exercised with the Court in which I sat. I felt that, so long as I conducted myself with propriety, I was as certain of my seat as any Judge in England; but that was in the North-Western Provinces. I do not know whether the same principles are observed in all parts of India.

H. Lushington, Esq.

26th April 1853.

4578. Lord *Mont-Eagle.*] Were you in the Sudder Court?

I was. On the subject of independence, I refer rather to the higher than to the lower Courts.

4579. Do you think that the Judges of the inferior Courts are equally independent, as regards their future promotion?

No; that is hardly a question of independence.

4580. *Chairman.*] Do you believe that the Natives have a good opinion of the integrity of the Sudder Courts?

They have the highest opinion of the integrity of all the European Judges, but at times they certainly complain that there is corruption amongst the officers of the Court. For some years there was a common belief that large sums of money were forwarded to the Agra Court, in the hope of procuring decisions; I had heard of the prevalence of this impression before, but the subject was brought more particularly to my notice when I went to Rohilcund as Judge of Moradabad; I could hardly believe the extent to which, according to the Natives, that system prevailed: it is a system precisely similar to that which, under the name of "Khutput," has been made known to many persons by the papers printed in Colonel Outram's case; it however had reference to political matters, this solely to judicial; not a word that I ever heard was uttered against any one of the Judges; but there were persons residing all over the country who persuaded litigants in the Sudder Court that the remittance of a large sum of money would secure for them favourable decisions, and large sums of money were remitted accordingly: when I went into the Sudder from Moradabad, the Magistrate, in accordance with what we had agreed upon before, brought forward several cases which were known to him, and offered to prove them; he proved, I think, some ten or a dozen, or perhaps more; and the parties were all punished. He had many more cases to bring on when it was discovered that the law required a private prosecutor in cases of this description, and he was desired to discontinue his prosecution, unless a private prosecutor appeared.

4581. Lord *Elphinstone.*] To whose hands was the money traced?

To the Vakeels, and the officers of the Court, and to the agents of the parties themselves.

4582. Was it supposed that those people had influence enough with the Court to obtain favourable decisions?

It was believed by the parties who sent the money; I myself, before I went into the Sudder, had seen papers sent to different persons, saying, "You must send money, or you will never succeed in this case;" and then speaking of people by names which did not belong to them, and the like.

4583. Had they any ground for supposing that they would have lost their cause if they had not sent the money?

I do not think they had any ground for it; but the Natives are very credulous indeed, and it is very easy to persuade them of the truth of any story that once gets abroad.

4584. Is it very easy to persuade them of anything which shall cause them to give their money?

Yes, in that way: they themselves have no opinion of the integrity of their own countrymen. The Natives are persuaded by those who get the money out of them, that the Vakeels, or officers of the Court, have some power of procuring a favourable decision; of course the decision could be procured only from the Judges.

4585. Lord *Mont-Eagle.*] Do you think that the Natives believe that the money was given to the Sudder Judges?

I think not; I cannot say; I was a Judge myself, and the Natives would not have told me after I went into the Court, but they told me everything before I went in, and no one ever hinted a suspicion against the Judges themselves: there was a person who held an office in the Court at Moradabad, a very intelligent and able man, who came to me, and said, "There is a case in which some connexions of mine have been on the point of sending a hoondee" (a remittance of money) "of several thousand rupees to Agra." "What advice did you give them?" "I advised them not to send it; I assured them that they would get no advantage by sending it;

H. Lushington, Esq.

26th April 1853.

it: they put the hoondee into my hands, and when I found that they would not listen to reason, I tore it up:" he tore it up, because he was intimately acquainted with the character of Europeans, and the manner in which their decisions were given. I was very happy to learn subsequently, that before the letter containing the hoondee could possibily have reached Agra, had it been put into the post-office, an order arrived at Moradabad, according with the wishes of the parties who had been about to pay for it: somebody at Agra must have found out, or had good reason to suspect, that this favourable order was about to be issued; perhaps one of the Judges had intimated his opinion, and that person must have immediately availed himself of the information, by making a demand for money: had money been remitted, he would have kept it, and would have congratulated those who sent it, thus, "You see it is as I told you; you sent the money, and you have gained the cause;" that is a system which I believe exists more or less in every Court, whether Supreme Court, or Zillah Court, or Sudder Court, throughout India; but it is not always that an opportunity is afforded of investigating and exposing it; it is kept very secret, and I think that the discoveries which I have described, could not have been arrived at, if it had not been for the energy and ability of Mr. John Cracroft Wilson, the Magistrate of Moradabad.

4586. *Chairman.*] Do you think that petty cases could be more summarily disposed of?

Yes; the same process is now observed in cases of a bond for 10 rupees, and of rights to large landed estates. I think it would be a very desirable improvement in the present system if the Moonsiffs were allowed to decide summarily all cases of debt on bonds under a certain amount; I would have them receive merely a plaint and an answer; the evidence should be taken orally, the documents inspected and returned, and the final proceeding should then be drawn out by the Moonsiff; that should form the whole record of the case; it could be done very easily: in India we classify the cases under certain heads; and the most numerous entry is to be found under the heading of "Debts on Bond:" I think that such an improvement would give great facilities, and would considerably reduce the work of the lower Courts.

4587. Lord *Mont-Eagle.*] Do you think that there should be no appeal in those cases?

There must be one appeal, if it is only for the moral effect.

4588. *Chairman.*] You stated on a former day, that the present law of special appeal encourages technicalities very much?

Yes; the present law; that is to say, the law which was in force when I was in India, encourages it very much indeed; it allows appeals on points of law and the usage or practice of the Courts; and we observed, that under those expressions a number of very frivolous cases were brought on. We frequently wished that we had authority to throw out those appeals, although some little point of practice had been violated or disregarded. When I was passing through Agra the other day, Mr. Thomason sent to me the draft of a new Act for special appeals, which I believe he had just received from Calcutta. It was then proposed to insert a clause to the effect, that in such cases as those to which I have alluded, it should not be incumbent upon the Court to quash the proceedings on account of technical objections. If they were of opinion that irregularity existed, they might point it out; but it could not be necessary, on account of such irregularity, to nullify the labours of, perhaps, 10 or 15 years. I remember an instance in point, which, I think, is worth mentioning. The law says, that in a regular suit there shall be only one amended plea. In a case which had come before the Zillah Court there had been an amended plea, and the Judge passed an order that an additional paper should be filed, explanatory of some accounts in the amended plea. In obedience to the order of the Court, this explanatory document, whatever it was, was filed with the papers. Many years afterwards it came before the Sudder Court on special appeal, and one of the pleas was, that the law permitted only one amended plea, whereas in this case two had been filed. The argument, that the second paper had been put in by order of the Court, was held to be ot no avail, and the whole of the proceedings, which, I think, had lasted not less than 10 or 15 years, were annihilated, only because there had been two amended pleas: there were precedents, if I remember rightly; and it was in accordance with those precedents that the order was passed. But I think I never heard of an instance in which more injustice was done under the name of law than on that occasion. This is one

H. Lushington, Esq.

26th April 1853.

one of the cases which have given me that aversion to technicalities which I expressed the other day.

4589. Lord *Wynford.*] Would not that second order for an amended plea very frequently occasion a great deal of perjury?

I do not see how exactly.

4590. Would not it show the defendant exactly where the case pinched, and where it was necessary to supply more evidence?

Yes, it might; but in the instance I have alluded to, I think it was merely explanatory of accounts, not introductory of any new matter. The object was not that any new matter should be introduced; there was no complaint that any advantage of that kind had been taken. The law is clear, of course, that there should be only one amended plea; but the Judge who tried the case, not understanding something in the accounts, asked some questions of the Vakeel, and not being quite satisfied with the answers, he directed him to file an explanation in writing, which should be attached to the amended plea. It was disputed in the Sudder Court by the Vakeels whether the explanatory paper could be properly called an amended plea or not, and even if it was an amended plea, whether the order of the Court did not cure the defect; but these arguments failed.

4591. In that view of the case, is not the law very reasonable?

I do not object to the law; but there was no occasion to carry it out in that manner; it would have been sufficient for the Court, after deciding the case upon the merits, to say that the Court below had done wrong in taking that additional paper, and that the Courts must not do in future. Every respect would then have been paid to regularity, and injustice would not have been done. That was a remarkable case. When I went into the Sudder Court, it was very much talked of; they thought it so great a hardship, that they presented a petition to review the judgment in that very case. They knew my opinion; but I held, that I could not sit in judgment upon it. The review of the judgment had previously been rejected by the Court, when differently constituted, and it would have looked too much like bringing one Judge to hear an appeal from another. Therefore, whatever my opinion might be on the point in dispute, I held that it could not properly be taken up again.

4592. *Chairman.*] Can you suggest any remedy for the fraudulent litigation which is said to take place in executing decrees?

I believe the complaints that are made of the litigation which ensues in the execution of decrees are very well founded; and there is a remedy which I would venture to suggest, one which, besides the advantage of checking litigation in that particular department, would also have a collateral advantage. I think that if it were not allowed by law to bring land to sale in execution of decrees, not only a great deal of annoying litigation would be prevented, but that it would also be a very wise and politic measure as concerns the landed aristocracy of India: it would be a very bold measure; I have heard it discussed in India, and it has been suggested to me since I came to this country, but its scope is startling at first. Nevertheless, if it ever were seriously proposed to carry it into a law, and I had a voice, I certainly should give it my concurrence. The proposition is, that land should not be saleable in execution of decrees. Such an alteration of the law would have a very extensive effect; and I do not mean to say that, even if I had the power, I would necessarily carry it out without further reflection. I have thought a good deal about it, both before I came to this country and since, and I was glad to hear that the measure had become a subject of consideration even in England.

4593. Lord *Ashburton.*] Should you adopt the measure with a view to the maintenance of the village communities in their integrity?

It would certainly have that effect, to a very great extent, and that would be a still more important effect than either of the other two that I mentioned. The objects would be threefold: first, the diminution of litigation; secondly, the preservation of the landed aristocracy; and, thirdly, the preservation of the Bhyachara communities, which are supposed to be the most valuable and the most worthy of preservation of any communities in India.

4594. Has it been part of the policy of the Government to maintain those communities?

H. Lushington, Esq.

26th April 1853.

Yes; everything has been done for their support in the North-Western Provinces. Two public servants, whose opinions have had the most weight, and who have also had the most power on these subjects, viz., Mr. Thomason, the present Lieutenant-governor, and Mr. R. M. Bird, who was a member of the Agra Sudder Board, have both entertained very strong opinions upon the subject. They would preserve those communities and support them, and increase their prosperity, even, it has been said, at the expense of others. I do not say so myself.

4595. What measure is adopted with regard to them by the Collectors of Revenue in the collection of the revenue; is it the practice to sell up the shares of the members of the community who do not pay up their portion?

They never sell for land revenue in the North-Western Provinces; shares are often transferred. The original law appointed sale as the penalty of defalcation; and they still can sell; but for many years, in the North-Western Provinces, no land is sold merely because it is in arrear of revenue. If the landholders have been particularly turbulent, and have set at defiance all authority, then sometimes the land is sold. It is only one means of taking it into the hands of the Government. But the sale of land is hardly to be recognized as a means of realizing the Revenue in the North-Western Provinces. The Natives do not understand our system of contract.

4596. Earl of *Harrowby.*] Do you realize the revenue as well without it as with it?

I believe so, in those provinces; but 16 years have elapsed since I was in the Revenue Department.

4597. Lord *Mont-Eagle.*] Are there not other reasons, independently of not selling the land to account for your having a better realization of the revenue in the North-Western Provinces than in other parts?

I am not aware of it; I believe it was found that the Natives did not understand the nature of the contract; they made the contract; and of course, according to our ideas, they were bound to abide by it, and if they lost the land, because they did not pay, they were considered only as having injured themselves. The effect was, that the land was gradually passing from the present holders to others. That system was put an end to in the North-Western Provinces, and the alienation of land has been very considerably checked in consequence; I do not think that land is now sold merely to realize revenue.

4598. In the North-Western Provinces is not the revenue of every part of the land charged upon the whole township?

In that class of villages technically called "Zemeendaree," the proprietors are by law and in practice jointly and severally responsible; and I believe that in some "Putteedaree" estates beyond Delhi, the responsibility is considered to be joint, independently of the law, and in conformity with it. But the great object of the settlement undertaken 20 years ago was to define the rights of the coparceners to adjust the public demand in such a manner that one man might not suffer for the default of another.

4599. Lord *Ashburton.*] Will you describe the effect of a sale of a portion of the village property in breaking up the community?

I understand the question to refer to what are called Putteedaree communities. The great evil is, that it introduces a stranger. If a share or puttee is put up to sale and purchased, the purchaser is generally either some personal antagonist of the defaulters, which immediately introduces litigation in every form into the village, or a stranger, a speculator; some monied man residing at the Sudder station. The purchaser has the greatest difficulty in obtaining possession of the rights he has purchased; and frequently he is unable to ascertain what they are, because the brethren of the party whose rights have been forfeited are opposed to the interloper. He then endeavours, with the assistance of the Court, to enforce his legal rights, and the whole community are there subjected to expense; they are involved in litigation, first in the Collector's Court, then in the Magistrate's Court (because affrays are certain of ensuing), and then they fall into the abyss of the Civil Courts. The moment that the share of one of the brethren, in a purely Bhyachare community, has been compulsorily alienated, the village may be looked upon as almost ruined; a result which frequently occurs, even when the alienation has not been compulsory.

4600. What

H. Lushington, *Esq.*

26th April 1853.

4600. What should you say is the difference between the social condition of a perfect village community, and that into which it falls when so broken up?

The difference is very great; in the former case the members of the community are, for the most part, prosperous and contented, giving little or no trouble to the authorities, paying the revenue regularly, and settling all local disputes amongst themselves. In the latter case the reverse of all this obtains, and they become bad members of society, bad subjects, poor, quarrelsome and discontented. The deterioration goes on rapidly, till it generally ends in loss of revenue, and the transfer of the whole village to purchasers or farmers, under whom the former proprietors are little better than turbulent labourers.

4601. What is the condition of the heads of the villages in such a community?

The condition of the heads of these villages is upon a par with that of a substantial yeoman in this country; of course, their condition varies greatly with circumstances: some of them in large and lightly assessed villages are wealthy and influential; whilst others are content to hold the plough. The general tendency of our system has been, I think, to diminish the importance of these persons. This effect has not been intentionally produced, but is the natural consequence of a greater regard for individual rights. The welfare of the individuals, however, has not been improved by the change.

4602. Do they constitute the gentry of the country?

I do not think a correct idea would be conveyed by saying that they did: I should rather say that they constitute a higher class of peasantry. I do not think the word "gentry" would explain it to an English ear: it would convey too high an idea of their average social position. These men are cultivators; many of them actually hold the plough themselves, but not all. In small communities they cultivate with their own hands; but taken as a whole, they are the most valuable portion of the national community. These are the classes from which the armies are recruited.

4603. When a village community is broken up, do not those classes sink and pass away?

It frequently happens that a powerful neighbour, having got possession of the share of a single brother, gradually encroaches upon all the rest; he takes his opportunity when they are in any trouble (for they are sure to be in trouble in consequence of his coming at all), and he reduces those men to the class of mere cultivators. Beyond that it is difficult for him to go, because the people I am now speaking of cling to the soil like the trees which are standing in it; but they are oppressed by the person who has acquired the proprietory right in the village, which formerly was possessed by themselves, and they are reduced to the condition of mere labourers. In some villages that process has been attempted in vain. They are very ready to resist oppression of any kind, even legal oppression; they do not judge very nicely whether they are acting legally or not, but they resist the intrusion of strangers, and frequently succeed in maintaining the existence of the community.

4604. Lord *Elphinstone.*] Do not they combine to purchase the share of any partner whose share has to be sold?

The strongest provisions are made to facilitate their doing so. It is in order to avoid those misfortunes to which I have alluded that the Government have passed laws and rules over and over again, the object of which was to save land from sale. There is a special provision which requires that the shares in Putteedaree estates shall be offered to the coparceners before they are put up for sale to anybody else.

4605. Lord *Ashburton.*] Is it consistent with the Hindoo law that land should be made saleable for simple contract debts?

I do not exactly know. The Hindoos do not practically object to it; though I am aware that the legality of alienating, under any circumstances, the undivided ancestral property of Hindoos has been much discussed in the Agra Sudder Court. The Pundits gave conflicting opinions in a case involving this question. Even if it should appear that such alienations are illegal, it would be impossible now to enforce the Hindoo law in that respect. Ever since our Courts were established, they have recognised the validity of public and private transfers of ancestral property of Hindoos in satisfaction of legal demands. These already suggested that land should be declared not saleable in execution of decree.

4606. *Chairman.*]

H. Lushington,
Esq.

26th April 1853.

4606. *Chairman.*] On whom does the onus rest of proving that a criminal is an Englishman?

I believe that point is still undecided. Many years ago the question was put to the Advocate-general of the day; he replied that it rested with the prisoner to plead that he was a British subject, and that consequently the Native Courts had no authority over him, and to prove it; and that if it could not be proved, the Court might proceed as if the prisoner was not a British subject. The other day a man of the name of Cameron was found guilty of murder by the Sudder Court, and some suspicion was entertained by the local authorities that he was a British subject. The point was then again referred to the Advocate-general, who pronounced that the former opinion was erroneous, and that it was the business of the Court to find out whether the accused was a British subject or not. This was, I believe, the opinion of the Judges of the Supreme Court; but no authoritative declaration was ever made as to the power of the Sudder Court to proceed to the execution of the sentence if they could not find out whether the man was a British subject or not.

4607. Lord *Elphinstone.*] Supposing they had hanged him, and it had been said afterwards that he was a British subject, what would have happened?

It is impossible to say. In that instance it happened that the man died; but the case might have arisen had it been otherwise, for they were unable to discover whether he was a British subject or not. Before the prisoner's death it had become a question whether, after making every possible inquiry, and failing to ascertain whether he was a British subject or not, we were safe in proceeding to carry the law into execution. For my own part I rather objected to proceed until we had obtained a distinct opinion from the Advocate-general, that under such circumstances we had the power to do so.

4608. Lord *Mont-Eagle.*] You have mentioned that the Courts are a good deal guided by precedent in their decisions; have they any means of knowing the precedents and decisions of other Courts?

Yes, they have very good opportunities now, for all the decisions by Europeans are printed and published in English.

4609. And the Judges can purchase them?

Yes: they can be procured in Calcutta and Agra.

4610. Lord *Monteagle* of Brandon.] Had you not at one time occasion specially to make a report to the Government of India upon the subject of the working of the jury system in the North-Western Provinces?

Yes; I was not called upon; but I had given a great deal of attention to the working of the jury system existing under the law, and I submitted my views to the Government.

4611. About what time was that?

It was about 1845.

4612. A considerable time having elapsed since the date of your report, would it be inconvenient to you, if you were furnished with a copy of that report, to look it over, and to append to it any observations you may have to make, showing how far you now agree in that report, or in what particulars further reflection or alteration of the facts would induce you to dissent from it?

I shall be most happy to do so. *

4613. Assuming, as I believe I am justified in doing from your evidence, that in your judgment the working of the jury system in the North-Western Provinces has been advantageous, is there anything in the character of the people in those Provinces that would deprive that result of its force as a general example, and limit it within the particular locality to which your evidence has applied?

No; I am not aware that there is.

4614. Earl of *Ellenborough.*] Do you think you could get as good jurymen in the Lower Provinces as in the North-Western Provinces?

I have had so little experience in the Lower Provinces since my attention was turned to the subject, that I am scarcely able to say.

4615. Lord *Monteagle* of Brandon.] Assuming that one of the difficulties in the administration of justice in India is the separation of falsehood from truth in the

* The Report, with the Witnesses' observations thereon, is printed in the Appendix C.

H. Lushington, Esq.

26th April 1853.

the depositions of the witnesses, have you known any cases in which the interposition of a jury has been an important auxiliary to the Judge in that matter?

An instance occurred within my own observation, and a very marked instance, in which I derived the greatest assistance from a juror; I was trying a very heavy case, and as soon as a witness had deposed and left the room, one of the jurors said to me, "Are you aware that that witness belongs to such a caste?" I said I was not aware of it, and I showed him by my answer that I did not know what he meant to imply; "because," he continued, "the witness cannot have spoken the truth on such a subject; if what he said was true, he himself, and others of whom he spoke, must have acted in a manner directly contrary to their religious impressions, and have exposed themselves to disgrace amongst the members of their own families." Having received this hint, I sent for the witness back, and cross-examined him again; the moment he saw that I had the key to his evidence, and that I knew he had told a falsehood, he changed his tone and manner, and enabled me to discover with the greatest ease what I believe, and what the jury unhesitatingly believed, to be the truth: the information which enabled me to arrive at the truth was derived solely from the hint given to me by the juror, a hint which scarcely anybody else in the room could have given to me, as there were not five men in the Court of the same caste.

4616. Without assuming cases precisely similar to that which you have now mentioned, do you believe that the interposition of a jury would, in many instances, and to a useful extent, aid the Judge in discriminating truth from falsehood in the evidence given?

Yes, I am decidedly of opinion that it would; I would not form the jury quite as it is in England, but in such a manner as would enable the Judge to derive from it great assistance, without being entirely dependent upon it.

4617. Lord *Wynford.*] Do you mean jurymen as Assessors?

Yes. There are three modes in which juries are used in India; I would use them to find facts, and also as Assessors.

4618. Lord *Elphinstone.*] Do you think that the jury system would work well with Judges who have not had a legal education and training?

The uses to which I would put the jury are quite independent of any legal training on the part of the Judge; it is because I believe the Indian Judges to be less able to find facts than the Natives that I wish to introduce the jury system, modified as circumstances may require.

4619. Lord *Monteagle* of Brandon.] What description of Natives would you rely upon for forming those juries, or bodies of the nature of juries?

If I could I would select the jurors; it is a different idea from that which we have of juries in this country; but if the question at issue was connected with land, I would choose the jurors from a particular class, and so on throughout the whole range of cases which come before the Court.

4620. What social class would you look to for the purpose; could you get any of the higher families, the better class of persons, to give this assistance in the administration of justice?

With great difficulty; I always succeeded in getting juries, as I mentioned on a former day, but not without some trouble.

4621. Although you succeeded with trouble, was not that trouble well applied?

I believe so, most sincerely; I myself should be very sorry to try any heavy criminal case without Native aid.

4622. Lord *Elphinstone.*] Does not the proper working of the jury system depend upon a thorough knowledge by the Judge of the rules of evidence?

Speaking of India I should say not; it is because I would have the Court independent of technical rules of evidence that I desire to avail myself of the use of the Natives. It is because the rules of evidence which are adopted in England are unfit to be applied to India that I consider the assistance of Natives so very desirable. In India all evidence of whatever kind should be heard and taken at its value, and I believe that a "thorough knowledge of the rules of evidence" on the part of the Judge (however valuable it might be) would not be so valuable as the local and practical knowledge of the Natives.

4623. Would not they go into all kinds of irrelevant evidence, and be apt to be led

H. Lushingt Esq.

26th April 1

led away by hearsay and various things which did not properly prove the case before the Court?

I have given an instance of the sort of assistance which would be obtained from juries; and though it is very probable that they might neg[illegible] the [illegible] rules of evidence, I do not think that a reason for enforcing them. I do not mean that the Judge should not comment on the evidence. The license to hear all evidence would render it more than ever necessary that the Judge should analyse it.

4624. Lord *Monteagle* of Brandon.] You are doubtless aware that, in the interval between the time when you went to India and the period of your return, three-fourths of the old dicta upon the subject of the English law of evidence has been set aside as worse than useless, and that a much simpler code of rules upon that subject has, with the consent of the highest authorities, been introduced?
I have heard so.

4625. Could there be the same difficulty in adopting in India the present simple, intelligible and philosophical law of evidence now prevailing in England, that there would have been in adopting the complex and somewhat irrational system which it superseded?
Certainly not.

4626. That part of the law of England, amended as it has been, and is being, would be suitable to India to a great extent?
An intelligible and philosophical law of evidence ought to be suitable to the whole human race; but I think that, in India, we are endeavouring to introduce those very defects which in England they are getting rid of; England, of course, will lead the way in both cases; it led the way in the defects; we have learned, or are learning, the defects; and about 10 years hence we shall begin to learn the remedies. I want to begin with the remedies, and I think the present is just the time to do it.

4627. Earl of *Harrowby*.] You say that it is not necessary to sell the land for the purpose of recovering the revenue in the North-Western Provinces; what other means do they employ?
Farming leases, temporary transfers, attachment of the crops, and, very rarely, personal restraint. The principle which chiefly governs the realization of the revenue in the North-Western Provinces is, that the crop is responsible to the Government for the revenue.

4628. That is found sufficient?
It is found sufficient practically. The Tahsildars, who are in fact the Collectors, exercise a very strict supervision. Until they are satisfied that they will get the revenue, they do not permit the crops to be carried away: as this might endanger the safety of the crops, these are, if necessary, cut, and entrusted to a third party, until arrangements are made for the payment of the public revenue. The greatest discretion and judgment are required in the Revenue Officers, European and Native, when a village falls into balance, for a slight error of management sometimes ruins a village which might otherwise have continued prosperous. The system is cumbrous and complicated, but it is infinitely more suited to India, and infinitely more agreeable to the people than the obsolete system of auction sales. I wish, however, to observe, that many years have elapsed since I was employed in the Revenue Department.

The Witness is directed to withdraw.

Hyder Jung Bahaudoor.

HYDER JUNG BAHAUDOOR is called in, and examined as follows:

4629. *Chairman*.] WILL you be so good as to state to the Committee whether you are a representative of the Carnatic Stipendiaries?
Yes, I am.

4630. You generally reside in Madras?
Yes.

4631. What parts of the Mofussil are you acquainted with?
I am acquainted with the Southern part, and also with the Western.

4632. Have you any acquaintances who reside generally in the Mofussil?
Yes, I have some acquaintances in the Southern part.

Hyder Jung Bahaudoor.

26th April 1853.

4633. Lord *Elphinstone.*] In the Southern part of the Madras Presidency?
Yes.

4634. In Tinnevelly?
No, in Nagore and Tanjore.

4635. And the Western part of the Presidency?
Yes, in Arcot and Chittoor.

4636. *Chairman.*] Is there any dissatisfaction expressed by the Natives generally with regard to the mode of administering justice in the Courts of Law in the Presidency; take the Supreme Court first?
The justice in the Supreme Court is quite satisfactory.

4637. And in the Company's Courts?
Of the Company's Courts I have heard some complaints.

4638. What is the nature of those complaints?
Partly that the cases are not disposed of soon; they are delayed for a long time; and also with regard to appeals from one Court to another: it takes a long time for a person to get justice.

4639. Would it be agreeable to the Natives if the number of those appeals were diminished?
Yes, it would be agreeable.

4640. Would they have sufficient confidence in the judgment of the Lower Courts to do away with appeal in all cases?
To do away with appeal altogether would not be satisfactory.

4641. Lord *Mont-Eagle.*] Would you propose that the power of appeal should be limited to causes of a certain amount, in which it might be worth while to appeal; or in what way would you limit the number of appeals, without taking away altogether the right of appeal?
The highest Court of the Company, called the Sudder Court, ought to be made an Appeal Court direct. I think it would be better to have the Judges of the Supreme Court to preside together with the Sudder Court Judges.

4642. Earl of *Harrowby.*] You would join the Sudder Court with the Supreme Court?
Yes.

4643. What advantage would you expect from joining the two?
I am sure that the Judges of the Supreme Court know the law better than the Judges of the Sudder Court.

4644. Lord *Broughton.*] Have you acted as Vakeel?
Once I conducted a suit in the Zillah Court, not for myself, but for my brother-in-law.

4645. *Chairman.*] But you have never been professionally engaged?
No.

4646. Are you well acquainted with the course of proceedings in those Courts?
Yes, as far as I know.

4647. Do you consider that the Moonsiffs, according to their habits of living and the class to which they belong, are sufficiently well paid?
I should think they are not sufficiently paid.

4648. Among the Natives are any doubts entertained of the integrity of the Native Judges?
No, there is no doubt about the integrity of the generality of them.

4649. It is believed that they are not liable to corruption in any way?
Generally not.

4650. Does that apply equally to the officers of the Courts?
With regard to the inferior officers I am not disposed to say so; I would not trust them.

Hyder Jung Bahaudoor.

26th April 1853.

4651. Then you do trust the Judges, but you would not trust the officers of the Courts?

Yes, generally.

4652. Has any doubt ever been expressed by the Natives as to the integrity of the European Judges?

No, they trust the integrity of the European Judges generally.

4653. Which Courts do the Natives generally prefer; those presided over by Native Judges or by European Judges?

They prefer to go to that Court where they find a competent Judge presides.

4654. Lord *Elphinstone.*] Whether he is a European or a Native?

Yes; whether a European or a Native.

4655. Do you know how the Small Cause Court at Madras has worked?

When I was there it had not worked so well as the late Petty Court, during the time Mr. Elliot was Chief Commissioner of the latter Court.

4656. Did you prefer the Petty Court to the Small Cause Court?

No.

4657. Has the Small Cause Court given satisfaction to the Natives; does it work well?

Yes, it works well.

4658. Is a large proportion of the suits which used to be tried in the Supreme Court now tried in the Small Cause Court?

Yes, they are tried in the Small Cause Court, but the people, not being satisfied with the Judges sitting in that Court, prefer rather to go to the Supreme Court.

4659. They are not satisfied with the Judges in the Small Cause Court?

No.

4660. Then, it does not work well?

I mean to say that the rules adopted for that Court are very good.

4661. But the Judges have not given satisfaction?

No, they have not.

4662. Did the Judges of the Petty Court at Madras, which existed before the Small Cause Court was established, give satisfaction?

It depended much upon the competency of the Judges. When Mr. Elliot was the Chief Commissioner of that Court, the people were satisfied with his justice; and when he left Madras for some time on leave, they were very much complaining of the loss of his services.

4663. Earl of *Ellenborough.*] Who succeeded Mr. Elliot?

Mr. Burgass, I think; but I am not sure.

4664. Had he ever been in the Judicial Department before?

He is a barrister, I believe.

4665. Lord *Elphinstone.*] What is the comparative expense of a suit in the Small Cause Court and in the Supreme Court?

In the Small Cause Court the expense is in proportion to the amount of the suit; I think it is two annas for a rupee up to 500 rupees, which is the extent of the jurisdiction of the Small Cause Court. In the Supreme Court also a similar charge is made up to that amount.

4666. But you are obliged to employ counsel?

It is necessary to employ a solicitor and counsel in causes above 500 rupees.

4667. In both Courts, or only in the Supreme Court?

In causes under 500 rupees, a suitor may, if he likes, employ a solicitor only in either Court, or he may conduct a suit himself.

4668. Are there any Native Judges in the Small Cause Court at Madras?

No.

4669. *Chairman.*] Do you think it is considered important at Madras to keep the appeal from the Courts of Law to England, as it now exists, in case any person should wish to carry his cause from that country to this?

I think

Hyder Jung Bahaudoor.

26th April 1853.

I think it would not be necessary if the Judges of the Supreme Court are to preside in the Sudder Court.

4670. You think the suitors would be satisfied if there was an appeal to the Judges of the Supreme Court in India only?
Yes.

4671. Then, are the Committee to understand that you think that if there was an appeal to a Court in India, composed of members of the Sudder Court and members of the Supreme Court together, that would give satisfaction, and that if such a Court existed, suitors would not wish to take their causes over to England for appeal?
Yes.

4672. Earl of *Harrowby.*] When you say that the Natives are dissatisfied with some of the European Judges, is it on account of their ignorance of the language, or of the law, or of the customs and habits of the people?
Partly their incompetency.

4673. Incompetency in respect of talent?
Yes.

4674. Is it that they are incompetent in point of language?
Decidedly they are incompetent in this respect also.

4675. They have not that familiarity with the language which would enable them to come to a right judgment upon the evidence and the pleadings?
Very few of them have such familiarity with the Native language.

4676. Lord *Elphinstone.*] Do you know anything of the persons who have signed the Petition from Madras which has been presented to the House of Lords?
I left my country in the month of March last year, at which time the Natives of Madras were about to form an association; and certain steps were taken by them, the particulars of which I am not acquainted with, but I believe the prevailing feeling was, that a Petition should be presented to Parliament.

4677. You receive letters from Madras, do not you?
Yes, I do.

4678. Have you heard anything of this Petition which has been presented to the House of Lords?
Yes, but not through the said letters so received from Madras.

4679. Do any of the leading Musselmans at Madras belong to that association?
I do not know.

4680. None of your friends have written to you saying that they did?
No, they have not.

4681. Lord *Mont-Eagle.*] Nor that they did not?
I should think that they did not.

4682. Lord *Stanley* of Alderley.] Have you seen and read that Petition which was presented from Madras?
I have seen a copy of it.

4683. Do you think that that Petition fairly represents the feelings of the Natives of Madras upon the subjects contained in that Petition?
I do not exactly recollect upon what subjects it speaks.

4684. Lord *Elphinstone.*] Do you know a Native of the name of Caniah Chitty?
Yes, I know him; he is a son of Ragovah Chitty.

4685. Is not he the owner of the Crescent?
I believe he is not the proprietor of the Crescent; I was told another person was the proprietor of the Crescent.

4686. *Chairman.*] From your personal knowledge of the Mofussil, and the opinions which you have heard expressed by your friends residing there, can you state whether the mode of administering justice in the country is satisfactory or not to the Natives?
It would be satisfactory if it was well administered.

4687. Is

Hyder Jung Bahaudoor.

26th April 1853.

4687. Is it well administered?
They would not have complained if it was well administered.

4688. Earl of *Ellenborough.*] Were you satisfied with the conduct of the Court in the case in which you acted for your brother-in-law?
Partly not.

4689. Will you state the particular grounds of objection that you had?
Perhaps it would be a long detail if I were to tell your Lordships.

4690. In what particular point was it you think you had not full justice done to you; was it either from want of competency on the part of the Judge, or from bad law, that the law was in any way badly administered?
No, the law is not bad.

4691. But it was not very well administered in that case?
It was not very well administered.

4692. *Chairman.*] From the want of knowledge on the part of the Judges?
Yes, from want of knowledge in some cases, and through partiality in other cases.

4693. Earl of *Ellenborough.*] What does that partiality arise from?
That I am not able to say.

4694. Had the Judge, in any particular case with which you are acquainted, any ground of partiality in consequence of his being personally acquainted with either of the parties?
In the case that I before mentioned, I suspected that it was some recommendation from influential persons which was the cause why I think justice was not administered properly.

4695. Who were those persons, Natives or Europeans?
In some cases Natives, and in some cases Europeans.

4696. Both in the same case, both Natives and Europeans?
Yes; perhaps a person might get two friends, a Native and a European.

4697. Lord *Wharncliffe.*] Was the cause you have mentioned in the Sudder Court?
Not in the Sudder Court, but in the Provincial Court of Chittoor, when it was existing.

4698. Before a European Judge?
Yes.

4699. Lord *Colchester.*] Who was the other party in that suit; was the other party a Native or a European?
A Native.

4700. *Chairman.*] We have heard that, in other parts of India, large sums of money have been sent by parties having suits before the Court, in the expectation that by so sending money, either to the officers of the Court or to the Judges, they would get a favourable decision; is there any impression of that sort in the Madras Presidency?
The Natives think so.

4701. From what you have seen, is it your own impression that if you had a cause before either of the Courts, you would, by sending a sum of money, be more likely to get a favourable decision?
Not with many of the Judges.

4702. But through some of the inferior officers?
Yes.

4703. Lord *Broughton.*] The Vakeels, for example?
Not the Vakeels, their business is to conduct the suits.

4704. Lord *Mont-Eagle.*] But the officers of the Court, of whom you have already stated that you would not be disposed to give very much credit to them, are those the parties you refer to?
Yes.

Hyder Jung Bahaudoor.

26th April 1853.

4705. *Chairman.*] The Natives do not think it would be of any use sending money for the purpose of corrupting either the European or Native Judges?

A great many are in hopes of getting their object by sending money.

4706. Earl of *Ellenborough.*] To whom do they send it?

To their Vakeels, or whoever is conducting the business.

4707. Lord *Stanley* of Alderley.] Do the Vakeels who conduct the business tell them that it will be useful in influencing the decision of the Judge?

To be sure they do not mention the Judge or anybody's name.

4708. But they tell them that if they will send money, it will be useful in getting a decision in their favour?

Yes.

4709. *Chairman.*] Do you believe that the money so sent stays with the Vakeels, and does not go any further?

I think it may not be the case in every instance; it may go further sometimes.

4710. Is that quite consistent with the opinion that you have of the perfect confidence in the integrity of the Judges of the Natives?

I should not say that every Judge, either European or Native, is of that character; some may have a tendency to corruption; but there is a feeling of confidence in the integrity of the Judges generally.

4711. Lord *Elphinstone.*] But yet the system of suitors sending money to Vakeels for the purpose of gaining their suits is general?

Yes.

4712. Whether the Judge is of good character or of bad character?

Yes; I am perfectly sure that in sending money for that purpose, it is not intended only for the Judges.

4713. *Chairman.*] Is it ever intended for the corruption of the Vakeel who represents the other party?

The corruption entirely rests with the Vakeel of the party who sends the money; such Vakeel may either use the money for the purpose of corrupting the Vakeel of the other party, or he may retain the money for his own benefit.

4714. Lord *Stanley* of Alderley.] Is money sent for the purpose of procuring evidence in favour of the party, if they have not got good evidence by paying people to commit perjury?

No, it is not for that purpose; money is sent to the Vakeel to employ it to gain the cause in the best manner he can.

4715. In the way which they think best, in fact, for the interest of their clients?

Yes.

4716. Lord *Wynford.*] Where do you think the money goes to at last; does the Vakeel keep the money, or does he distribute it to others?

I am not able to say whether the Vakeel keeps it himself or gives it to others, but he is the party who receives the money.

4717. Lord *Monteagle* of Brandon.] Do the Vakeels get rich?

Yes, generally.

4718. Earl of *Ellenborough.*] Does the Native who has sent the money complain that he is wronged if he finds that no good comes from it, that he does not gain his cause?

Yes, he does complain, and let the secret out.

4719. Lord *Wynford.*] Is that your opinion, or is it the opinion of the Natives generally, that he who sends the most money will get the cause?

I only answered the question put to me.

4720. Lord *Elphinstone.*] How much money did you send in that case in which you were concerned for your brother-in-law?

I think between 700 and 1,000 rupees.

Hyder Jung Bahaudoor.

26th April 1853.

4721. Was the property in dispute a very large one?
About 14,000 rupees.

4722. Lord *Mont-Eagle.*] That 700 rupees did not include the payment of the Vakeel?
It was besides that; the money was not sent for any Judge; it was sent for an official there.

4723. Lord *Colchester.*] Was it sent for some particular official?
Yes, some particular official.

4724. Lord *Elphinstone.*] But that person was not a Judge?
No, he was not a Judge.

4725. Notwithstanding your sending this sum of 700 or 1,000 rupees, did you lose your cause?
No, we gained the cause; but the money was not paid to the official; I understood afterwards that the Vakeel took it for himself.

4726. So that you had to pay the official over again?
No; when we gained our cause, we had nothing to pay to officials.

4727. Lord *Mont-Eagle.*] Did you make the Vakeel pay you back the money?
No.

4728. Lord *Wharncliffe.*] It was not a Vakeel at Madras, but at Chittoor?
At Chittoor.

4729. *Chairman.*] Have you reason to believe that the Vakeel ever thought of bribing the official, or that it was only a fraud upon yourself?
The Vakeels bribe the officials too: but in this case the Vakeel took the whole for himself.

4730. Lord *Mont-Eagle.*] Did you try to punish the Vakeel in any way?
I had no evidence.

4731. Earl of *Ellenborough.*] Who was the official who was to be bribed; what office did he hold?
He was a Sheristadar, I believe.

4732. How do you know that he did not get the money?
It was found out afterwards. I told a friend to ask the Sheristadar whether he got the money; he asked him, and the Sheristadar told him that the money was not paid to him by the Vakeel.

4733. Did he complain very much of not getting it?
No: he only said he did not get any money from the Vakeel.

4734. Lord *Mont-Eagle.*] Do you know that he refused it, or that it was not offered to him?
It was not offered to him.

4735. *Chairman.*] Have you any reason to believe that the same course was not pursued in other cases where the client was induced to advance money which never reached the official person?
No; I know that in some instances the official takes the money.

4736. Earl of *Ellenborough.*] How could the Sheristadar have influenced the Judge in deciding the case?
No, he has no influence in the matter.

4737. Then what was the use of bribing him?
It was the Vakeel who wrote to us to send some money for that purpose.

4738. What good could the Sheristadar have done you if he had got the money?
The Sheristadars have some voice in those matters. If the Judges are very competent, they take no advice of their officials; if they are not very competent, the cases are chiefly decided upon their opinion.

4739. *Chairman.*] What is your opinion of the system of police adopted in Madras and in the Mofussil?
They are quite different.

4740. The

Hyder Jung Bahaudoor.

26th April 1853.

4740. The system of police is quite different in the Presidency and in the country?
Yes.

4741. How does it work in the Presidency?
It works well; but in some cases the Magistrates require more power. They have no power to punish thieves.

4742. Lord *Elphinstone.*] Must they all be sent before the Supreme Court?
Yes, even for petty thefts.

4743. Are the Tamahdahs and the Duffadars corrupt, or are they honest in the Presidency?
They are almost all honest.

4744. You said that the system is quite different in the Mofussil. In the Mofussil there are no Tamahdars; the police is under Tahsildars?
Yes; but I cannot describe the difference properly.

4745. Who are there under them; is there only the village police?
The village police are under Tahsildars.

4746. Under them again, in every village, there is a Talliar?
Yes; there are two sets; one called Talliars and the other Peons.

4747. *Chairman.*] Are life and property very secure under this system?
I consider life and property are safe under the Mofussil or Country Police, but not so much so as under the Presidency Police.

4748. Were you ever a Justice of the Peace?
Yes.

4749. Did you take an active part as such?
Yes.

4750. Are the natives generally active in performing the duties of that office?
Yes, they are.

4751. Will you state what are the duties entrusted to a Justice of the Peace?
Their duties are to levy the assessments upon houses and lands, and to collect them, and to construct roads and bridges, but not to administer justice.

4752. Lord *Elphinstone.*] Do they levy what we call here Municipal Taxes; such as for repairing the roads, building the bridges, cleansing the sewers, and so on?
Yes.

4753. How long has this system of Justice of the Peace being held by Natives been in existence in Madras?
The Natives were appointed at the time of Lord Elphinstone's Government, in the year 1838.

4754. What system was acted upon for those purposes previously to that date?
Previously to that date, I think the Company's officers were performing that duty.

4755. Has it been agreeable to the Native population generally, that those duties should be entrusted to the Natives?
Yes, it is; but the Native Justices ought to have some power more than has been given to them. They are called Native Justices of the Peace; but there is no justice to be done by them.

4756. Lord *Elphinstone.*] Are there not Stipendiary Magistrates?
There are.

4757. Is there not, generally, a Native on the Bench as a Stipendiary Magistrate?
Yes, there is.

4758. *Chairman.*] What additional functions would you wish to see discharged by the Native Justices of the Peace?
The Native Justices of the Peace in Madras ought to have the same power

as

Hyder Jung Bahaudoor.

26th April 1853.

as the Justices in England; because we have sworn, and have taken our oath, to do justice and to punish offenders, but we have not such power.

4759. Lord *Mont-Eagle.*] Do you think that many of the Native gentlemen would like to have those appointments; would they undertake the duties?
They would.

4760. Lord *Monteagle* of Brandon.] If the appointment of Magistrate was considered as a creditable distinction and an honour, do you think the gentlemen of India would be indisposed to become Magistrates under those circumstances, or that they would be glad to be magistrates?
Yes, they would be glad to take it.

4761. *Chairman.*] Do they willingly accept the office now?
Yes.

4762. Lord *Broughton.*] Are there many of them holding that office?
There are about three or four.

4763. Lord *Mont-Eagle.*] Have they any control over the police?
None at all.

4764. *Chairman.*] Does that rest with the Stipendiary Magistrates?
Entirely.

4765. How many of those are there?
There are three European Magistrates, one Native Christian, and one East Indian. The Mussulman population has several times petitioned the Government to appoint a Mussulman Magistrate, but they have not done so.

The Witness is directed to withdraw.

HAFIZ SUDEROOL ISLAM KHAN is called in, and examined as follows:

Hafiz Suderool Islam Khan.

4766. *Chairman.*] YOU have resided generally at Madras?
Yes.

4767. Lord *Elphinstone.*] Do you belong to the family of the Nabob of the Carnatic?
I am a relation of the Nawab of the Carnatic.

4768. Are you a relation of Hydur Jung Bahaudoor?
Yes; he is my cousin.

4769. *Chairman.*] During your residence in Madras, have you paid any attention to the mode in which justice is administered in the Courts of Law there?
Yes; I have attended generally in the capacity of grand juror there, and have seen justice administered in the Queen's Court, likewise in the Mofussil Courts; but the adjudication in the Mofussil does not operate well, owing to the obligation of appeals in most cases from that Court to the Sudder Adawlut; therefore the people suffer great hardship.

4770. What is the hardship?
The great expense, and cases not being dealt with properly.

4771. You object to the cause being tried over again frequently in different Courts?
Yes.

4772. To begin with the Supreme Court; are you satisfied with the way in which justice is administered there?
I am.

4773. Are there any complaints made, either with regard to delay or with regard to expense in that Court?
Yes; I have heard several people complain of the expense as well as the delay; but they are perfectly satisfied with the judgments of the Queen's Court.

4774. Is that the case with the Company's Courts; are they satisfied with the decisions of the Company's Courts?

Hafiz Suderool Islam Khan.

26th April 1853.

They are not at all satisfied, because the justice of their claims are not generally decided upon in a proper manner.

4775. Lord *Broughton.*] Is there much business in the Supreme Court at Madras?
Yes, there is.

4776. *Chairman.*] What are the principal complaints against the Company's Courts?
The delay and expense.

4777. How long do the delays extend?
Sometimes 6, 7 or 10 years; there is no limited period.

4778. Lord *Elphinstone.*] But the delays are not so great now as they were some years ago.
No; that is in consequence of the recent appointment of several subordinate Judges, particularly the Sudder and Principal Sudder Ameens.

4779. Do you mean to say that now causes are sometimes lying over for seven or eight years before they come to be tried?
Yes, not only do, but there is an additional delay in the giving a final decision.

4780. *Chairman.*] Since the greater employment of Native Judges, have not those arrears been done away?
Not entirely; there still exists a delay.

4781. Lord *Monteagle* of Brandon.] Do you think that the decisions of the Sudder Court would be more satisfactory if there were Judges of the Supreme Court, English Judges, joined with the Sudder Judges?
Yes; I am decidedly of opinion that people would be better satisfied if the Supreme and the Sudder Court Judges were to preside together.

4782. *Chairman.*] Is there a complaint of the expense in the Company's Courts?
Yes.

4783. What are the sources of expense in the Company's Courts which are chiefly complained of?
That the stamp duty is so heavy.

4784. Lord *Monteagle* of Brandon.] Are not the stamp duties particularly heavy upon the smaller class of suits?
Yes, they are.

4785. Are not the stamp duties payable upon the first beginning of the case?
Yes.

4786. Have you ever known cases in which, to your judgment, the amount of the stamp duty has prevented a poor man from bringing forward his case to obtain justice against a rich man?
Not to my present recollection.

4787. *Chairman.*] Is the administration of justice in the Mofussil more tardy and more expensive than in the Presidency?
Yes.

4788. Is there much complaint among the Natives of the incompetency of either the Native or the European Judges?
Yes, there is, of some of them.

4789. They are of a mixed character; some are good and some are bad?
Yes.

4790. Does that apply both to Natives and to Europeans?
Yes, it does.

4791. What is the chief complaint against the bad Native Judges; is it want of aptitude, or want of integrity?
I have heard of the former, but not the latter complaint; I have likewise been in the Zillah of Chingleput, and have there heard the people say they were satisfied with the decisions of those Native Judges.

Hafiz Suderool Islam Khan.

26th April 1853.

4792. Lord *Monteagle* of Brandon.] Is any inconvenience felt in the Zillah Courts from any want of knowledge of the language by the European Judges?
Yes; without a thorough knowledge of the language of that country, the European cannot administer justice; therefore it involves the necessity of him being perfect in the language.

4793. Until he acquires a knowledge of the language of the country, and of the manners and customs of the people, can he, in your judgment, discharge his functions satisfactorily?
No, he cannot.

4794. Have you known any instances of Judges of that description in which they had not a sufficient knowledge of the language and of the manners of the people to enable them to administer justice satisfactorily?
No.

4795. They have generally known the language of the country?
Yes; they have generally, but not sufficiently.

4796. *Chairman.*] How does the Punchayet system answer in Madras?
The people who appear before the Punchayet are satisfied with its decisions.

4797. Lord *Monteagle* of Brandon.] Does the Punchayet give satisfaction?
It does.

4798. Suppose a cause in which a witness was brought forward, not speaking the truth, but speaking what was false, in which way do you think there is the best chance of his being found out to be a liar, and not to have spoken the truth, by the Punchayet, or by the Judge?
The Judge cannot detect him as such, until he is thoroughly acquainted with the language, manners and customs of the country and people; but the Punchayet can easily.

4799. Do you think that the Punchayet are a greater means of safety against false evidence than the Judge would be?
Yes.

4800. Lord *Elphinstone.*] The Punchayet only sit in civil cases, not in criminal cases?
Only in civil cases.

4801. Earl of *Harrowby.*] Are the Natives willing to give their time to the Punchayet without any payment?
They are obliged, according to the Regulation, to perform that duty; but I think they are not satisfied with devoting their attention to it without receiving any remuneration.

4802. *Chairman.*] How are the persons composing the Punchayet selected?
I do not know.

4803. Lord *Elphinstone.*] Are they not selected by the Judge?
I think they are.

4804. Lord *Monteagle* of Brandon.] Do you know what class of people they are; are they the most respectable that the Judge can get to serve?
Yes.

4805. Of respectable families, well born?
Yes.

4806. Earl of *Harrowby.*] Are the Punchayet persons who have any knowledge of the law?
I think they have some knowledge of it; without a knowledge, they could not decide the cases.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next,
Two o'clock.

Die Jovis, 28° Aprilis 1853.

LORDS PRESENT:

The LORD PRESIDENT.
Earl of HARROWBY.
Earl of ELLENBOROUGH.
Lord Bishop of OXFORD.
Lord ELPHINSTONE.
Lord MONT-EAGLE.
Lord COLCHESTER.
Lord SOMERHILL.
Lord WHARNCLIFFE.
Lord WYNFORD.
Lord ASHBURTON.
Lord GLENELG.
Lord STANLEY of Alderley.
Lord MONTEAGLE of Brandon.
Lord BROUGHTON.

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

THE REVEREND HENRY MELVILL, B.D., is called in, and examined as follows:

Rev. H. Melvill, B.D.
28th April 1853.

4807. *Chairman.*] YOU are the Principal of Haileybury College?
I am.

4808. How long have you occupied your present position?
I was appointed in the year 1843.

4809. Lord *Monteagle* of Brandon.] You were yourself educated at Cambridge?
I was; I resided at Cambridge six or seven years as one of the Public Tutors, and then I had clerical duties in the neighbourhood of the metropolis.

4810. You were Second Wrangler and First Prize Man in the year 1821?
I was.

4811. You were afterwards a Fellow and Tutor at St. Peter's?
Yes; I took my degree at St. John's, and then I removed to St. Peter's.

4812. You are therefore well acquainted with Cambridge, and the course of studies at Cambridge generally?
I am.

4813. *Chairman.*] With what officers are you associated at Haileybury?
There are eight Professors, one of whom discharges also the office of Dean, and another that of Registrar.

4814. What are your own duties?
My own duties are principally those of superintendence; I am the chief officer of discipline, invested with absolute authority; I have also the control of the expenditure, and regulate the disbursements of the College: I have nothing to do with the instruction of the students; that is entirely discharged by each Professor in his respective department: I am assisted by the Dean in all matters that relate to discipline, and by the Registrar in all that relates to the expenditure of the College, and the management of the property of the East India Company.

4815. Will you describe the preliminaries of the admission to Haileybury?
A young man must obtain a nomination to the College, either from a member of the Court of Directors, or from the President of the Board of Control.

Rev. *H. Melvill, B.D.*

28th April 1853.

Having obtained that, he is subjected to an examination conducted by Examiners, who are appointed by the Board of Control; if he succeeds in passing that examination, he is admitted; if not, he is deferred till another time.

4816. Then your Professors take no part in the preliminary examination?
None whatever.

4817. What subjects does the preliminary examination include?
The preliminary examination includes Greek and Latin; the Greek Testament, Paley's Evidences, History, Geography, the first four books of Euclid, and Arithmetic.

4818. Earl of *Ellenborough.*] Are not certain matters inquired into before the nominee gets his appointment to Haileybury?
He has to produce testimonials of conduct, which are submitted to those examiners appointed by the Board of Control; and it is in their power, on the testimony of those credentials, to reject him, if they think fit, or to defer his nomination till a future time.

4819. Is not something done in Leadenhall-street before he gets the appointment at all; must he not prove certain facts as to age and birth?
Yes; he has to give in, I believe, a baptismal certificate, and a certain document is filled up, to show that there has been no undue influence exerted to obtain the appointment.

4820. Was not the appointment to Haileybury formerly made by the Board of Directors, and not by an individual member, or by the Board of Control?
The appointment, I think, to a Writership does not take place until after the student has left Haileybury. I imagine it is then that the Court of Directors, as a body, appoint.

4821. Lord *Wynford.*] What Greek and Latin books are they examined in?
The candidate is allowed to name the books in which he desires to be examined. He must take a certain quantity; for instance, two plays of Sophocles, or two of Euripides; that is, he may take either of them; or he may take portions of Xenophon, Herodotus or Thucydides; and he must take a certain quantity of Latin; he may take six books, for instance, of Virgil, or he may take the Georgics, or he may take the Odes of Horace, or some parts of Livy or Cicero.

4822. Lord *Monteagle* of Brandon.] Is there not some special discretion allowed to the student with respect to the moral and scientific branches of the examination?
No, there is no discretion allowed to him in those respects. He must be examined on the first part of Paley's Evidences, and in the four Gospels, and in Mathematics; he must qualify himself in Euclid and in Arithmetic.

4823. There are before Parliament the rules under which this preliminary examination is conducted; will you have the goodness to throw your eye over them, and to inform the Committee whether those rules and regulations, which were made in 1837, are substantially the same rules which are now in force?
I believe they are the same.

The same are read, as follow:

"RULES and REGULATIONS to be observed with respect to the Examination of Candidates for Admission to the East India College at Haileybury.

"EACH Candidate shall produce testimonials of good moral conduct, under the hand of the principal or superior authority of the College or public institution in which he may have been educated, or under the hand of the private instructor to whose care he may have been confided, and the said testimonials shall have reference to his conduct during the two years immediately preceding his presentation for admission.

Each Candidate shall be examined in the Greek Testament, and shall not be deemed duly qualified for admission to Haileybury College unless he be found to possess a competent knowledge thereof, nor unless he be able to render into English some portion of the works of the following Greek authors: Homer, Herodotus, Xenophon, Thucydides, Sophocles, and Euripides, nor unless he can render into English some portion of the works of one of the following Latin authors: Livy, Terence, Cicero, Tacitus, Virgil and Horace, and this part of the examination will include questions in Ancient History, Geography and Philosophy.

Each Candidate shall also be examined in Modern History and Geography, and in the ments of Mathematic Science, including the common rules of Arithmetic, Vulgar and

Decimal

Rev.
H. Melvill, B.D.

28th April 1852.

Decimal Fractions, and the first four books of Euclid; he shall also be examined in Moral Philosophy, and in the Evidences of the Christian Religion, as set forth in the Works of Paley.

It is, however, to be understood, that superior attainments in one of the departments of Literature or Science comprised in the foregoing plan of examination, shall, at the discretion of the Examiners, be considered to compensate for comparative deficiency in other qualifications; and also that the examination shall be so conducted as to give to each Candidate reasonable time to prepare himself for the said examination.

The Examiners, as above appointed, are instructed to meet forthwith, and to divide the duties herein assigned to them amongst themselves in such a manner as to give to each Examiner some department or branch of examination; but although the Examiners are to examine each in his own department separately, they are to decide collectively, and after due consultation on the claims of each candidate, and are to certify, under the hands of all and each of them, their decision for his admission to the College of Haileybury, or his rejection, as the case may be."

4824. In these Rules it is stated, "It is, however, to be understood, that superior attainments in any one of the departments of Literature or Science comprised in the foregoing plan of examination, shall, at the discretion of the Examiners, be considered to compensate for comparative deficiency in other qualifications; and also that the examination shall be so conducted as to give to each candidate a reasonable time to prepare himself for the examination:" that is part of the present plan?

I believe that this is acted upon strictly; but not being an Examiner, nor having anything personally to do with the examination, I cannot speak so definitely as I otherwise might.

4825. Comparing this preliminary examination with, we will say, the matriculation course for admission to the London University, is not this, above all with the clause to which reference has been made in the preceding question, exceedingly slight in itself as constituting any real test of the acquirements of the party to be admitted?

I am not myself acquainted with the particulars of the examination at the London University; and, therefore, I do not feel competent to answer that question.

4826. Abstracting the comparative view which the question implied, do you think it is an adequate test in order to judge of the qualifications of persons going to Haileybury?

I think the test might be, in some respects, improved.

4827. In what respects?

I think the allowing excellence in one part to compensate for deficiency in another, ought to be removed; because I am aware that a student will sometimes enter Haileybury who has not read half the First Book of Euclid; I think that ought not to be.

4828. *Chairman.*] Are many rejected?

I think, generally about one-third are rejected at each examination; of course, their rejection is not final; they must wait another six months.

4829. Earl of *Ellenborough.*] Are any ever finally rejected?

I imagine that such cases occur; but the preliminary examination does not come under my immediate knowledge.

4830. Lord *Monteagle* of Brandon.] Do you know who the present Examiners are?

Mr. Dale, the Canon of St. Paul's; Mr. Eden, a clergyman in Norfolk; and Mr. Stone, the Rector of Spitalfields.

4831. *Chairman.*] Are the same Examiners often re-appointed?

Almost invariably; I do not think there has been any change in the Examiners since I have been connected with Haileybury.

4832. Is the examination one for which special training is required?

I do not think it is; it ought not to be so: it is only such an examination as a young man, taking due advantage of the opportunities afforded by a public school, ought to be fit for.

4833. Lord *Wynford.*] At what age do they come to Haileybury?

They must be 17.

Rev. H. Melvill, B.D.

28th April 1853.

4834. *Chairman.*] Practically, is the candidate frequently prepared for the examination by the process which is sometimes called cramming?

Yes, I think he very frequently is.

4835. Lord *Monteagle* of Brandon.] Do you know whether there are any preliminary schools to prepare students for Haileybury, in the same way as there are preliminary schools to prepare pupils for Woolwich and the other Military Establishments?

I am aware that private tutors are often employed; I am not aware of anything that can be designated a school for that purpose.

4836. *Chairman.*] Do you find generally that the pupils who have passed the examination are sufficiently prepared to profit properly by the subsequent education in the College?

Yes; I think the instances are rare of students being admitted who have not capacity enough, supposing them to have industry, to avail themselves of the instruction at Haileybury.

4837. Lord *Wynford.*] Do not you think that the test for a boy at the age of 16 is quite severe enough if he is required to pass an examination in the choruses of Sophocles?

I think the test is severe enough; but I think the principle of allowing deficiency in one part to be counterpoised by superiority in another, is injurious.

4838. *Chairman.*] Will you state the course of study which the student goes through after his admission to Haileybury?

In the first Term the student has to attend Lectures in Law, Classics, Mathematics and Sanscrit. In the second Term the same subjects are continued, and there are added to them either Political Economy or History (which are taken in alternate Terms), and another Language, Persian, if the student be destined for the Presidency of Bombay or Bengal; Teloogoo if he be intended for Madras. In the third term the same subjects are continued; but there is added to them a third language, Hindostanee; in the fourth Term there is no change in the subjects of the Lectures.

4839. What amount of knowledge of Political Economy is required from the student?

The students are taken through an elementary course on the production, distribution and exchange of wealth. Their attention is further directed to the different systems of taxation which have prevailed, or do prevail, in the world; to the connection of these with modes of occupying the soil; to the reaction of these systems on the wealth and mechanism of nations, especially Asiatic nations. The Lectures then take up the subject of barter, exchanges, money and credit; and, if time allow, other less vital provinces of the general subject.

4840. Earl of *Ellenborough.*] Are they not examined in any book on Political Economy?

Generally speaking, not. The student's attention is directed to certain books, and he reads a certain portion of them, but the Lecturer gives his Lectures *vivâ voce.* A large portion of the Lectures have been privately printed by the lecturer, Mr. Jones; and they could, if the Committee desire it, be subjected to their inspection.

4841. *Chairman.*] Does one of the Professors exclusively teach Political Economy to the exclusion of any other subject?

The same Professor teaches History.

4842. Lord *Monteagle* of Brandon.] Was that the case in the time of Professor Malthus; did he include the two in his course of study?

The arrangement was precisely the same in the time of Professor Malthus.

4843. Will you state what the eight Professors severally teach?

The Classical Professor, of course, teaches Classics, including the Greek Testament; the Law Professor teaches Law; the Professor of Political Economy teaches both History and Political Economy; the Professor of Mathematics teaches Mathematics. Those are all the European Professors. Then the Professors of Sanscrit teach the language of which they bear the name, and similarly the Professor of Persian and the Professor of Hindostanee. The Professor of Sanscrit is also the Professor of Teloogoo.

4844. Is

4844. Is there any instruction in Arabic given?

Voluntarily, either by the Professor of Persian or the Professor of Sanscrit, both of whom are Arabic Scholars. I should state with respect to the checks upon incompetent men, that at the close of each term there is an examination, the tests in which are prescribed by the Statutes of the College. If the student does not reach those tests, he loses a Term. If he were to lose two Terms in succession, he would be disqualified from returning to the College. If he lost three Terms in the whole, he would be equally disqualified.

4845. How many upon the average do not enter the Civil Service?

Judging from my own experience since I have been connected with Haileybury, I should say between six and seven per cent.

4846. When a student has passed at Haileybury, does he necessarily obtain a civil appointment?

He does not necessarily. The Court of Directors retain the power of withholding the appointment if they see reason for doing so.

4847. Earl of *Ellenborough*.] Do they ever do it?

I am not aware of its having been done.

4848. *Chairman*.] Would the ground of doing so be that of immoral conduct or bad character?

A case not having occurred to my knowledge, I do not know upon what grounds it would be done. If immoral conduct had been detected before he finished his course at Haileybury, it would have come under the College discipline. But I suppose that grievous improprieties, not discovered till afterwards, might influence the Court.

4849. In what proportion is the time of the student divided between European instruction and the Oriental Languages?

As far as giving Lectures is concerned, with a slight exception, the first four days of the week are given to the European department, and the two last to the Oriental.

4850. Does that proportion, in respect of time, give a fair view of the amount of attention which the student gives to the respective departments?

No, I do not believe it does. The system in the Oriental department, by causing the reading of a good deal beyond what is required by the actual test, has brought it to pass that, I think in many cases, four-fifths of the student's time, if he be industrious, are given to the Oriental department, and only one-fifth to the European.

4851. Do you consider that too much attention is engrossed by the Oriental studies?

I do.

4852. Is failure now more common in the Oriental or in the European subjects?

Much more common in the Oriental.

4853. Is Sanscrit a principal study?

Yes; in the statement I have given of the studies, it will be observed that Sanscrit enters into every term.

4854. What is the ground of Sanscrit being retained?

Sanscrit is supposed, and I believe justly, to stand in much the same relation to the Indian vernacular languages in which Latin, for example, stands to the modern languages of Europe; therefore, in learning Sanscrit, you acquire a key to the other languages.

4855. Do you advise its retention?

I should not advise its retention as a compulsory study, but I think it might be justly retained as a voluntary one.

4856. Are all European subjects made equally important?

Yes, all European subjects are made equally important, so far as a passing mark is concerned.

4857. Do the students generally do a great deal more than is required of them?

Yes, a large proportion of them do a great deal more.

4858. Lord *Monteagle* of Brandon.] Does the present division of the time to which

Rev. H. Melvill, B.D.

28th April 1853.

which you have adverted between Oriental and European subjects leave to the student at Haileybury adequate time for the prosecution of the English part of his education?

No, I think that the student's attention is far too much engrossed by the Oriental department.

4859. I find in a despatch of the Court of Directors, anterior to the foundation of Haileybury, written in the year 1802, the following statement: "Whatever European education is deemed proper for our servants, we are decidedly of opinion they should receive in Europe, and that their application in India should be confined chiefly to the study of subjects properly Indian; we have, therefore, in contemplation to establish such regulations at home as shall afford the means of their acquiring both classical and mathematical instruction; the elements of those branches of science most useful to our service abroad": is the distinction there laid down with respect to the advantage of applying the student's time in Europe to European studies maintained in any considerable degree at Haileybury?

I do not think it is.

4860. *Chairman.*] Does it often happen that students who distinguish themselves in the Oriental studies neglect almost entirely the European subjects?

I think very seldom; students who are distinguished in one department are generally distinguished in all the rest.

4861. What do you consider is the principal inducement to application on the part of the students?

I think there is in many students a most praiseworthy desire of fitting themselves for the public service; and the East India Company are very liberal in giving rewards.

4862. What honours are awarded to meritorious students?

We have Prizes and Medals, and we also give honorary distinctions.

4863. Do you find that that system works well?

Yes, it produces abundant competition, competition enough to take out conceit, to teach men their defects, as well as to draw forth their powers.

4864. Lord *Monteagle* of Brandon.] How is the distribution of honours made; are they by designation specially affixed to the individual names, or are they given by classes, into which classes various individuals enter?

There are two classes of honours, the same as there might be at Cambridge, Wranglers and Senior Optimes.

4865. Are the terms "highly distinguished," and so on, which appear in the printed lists, applied as special designations to particular individuals?

No; the term "highly distinguished" is made to apply to the whole of the First Class; the term "passed with great credit" to the whole of the Second Class; but in those classes they stand in their relative order.

4866. Earl of *Harrowby.*] Alphabetically?

No; in the order of merit, as at Cambridge.

4867. Lord Bishop of *Oxford.*] Are those terms applied to advancement in particular subjects; for instance, the Oriental Languages, Mathematics, and so on?

The denomination "highly distinguished" is given to the sum total of acquirements.

4868. Are there not marks of distinguished proficiency in different branches of study?

Yes; each professor makes out his own list according to the order of merit, but not using the term "highly distinguished."

4869. But using certain terms?

Yes; such as "great proficiency," "good proficiency," "proficiency," and "little or no proficiency."

4870. *Chairman.*] Does that system tend to diminish the value of the examination?

I think the honours are too largely distributed. We are all aware that, when all are distinguished, in truth none are; but I will explain how that has arisen.

The

Rev.
H. Melvill, B.D.

28th April 1853.

The Government has successively raised the tests which are necessary for passing, but has left untouched the tests which are necessary for honours. The consequence is, that now, a man who fits himself to pass can hardly escape gaining honours.

4871. How has that system arisen?

Solely in that way, perhaps through oversight; the one test has been heightened, whilst the other has remained the same. The only comfort is, that what was formerly considered distinction is really not very little more than sufficiency.

4872. Lord *Monteagle* of Brandon.] Do you not consider that it would be expedient to make the terms of honour more commensurate with proficiency?

Undoubtedly.

4873. *Chairman.*] Do you send periodical reports to the parents and guardians?

Yes; we send a monthly report of conduct and proficiency to the parents or guardian of each student.

4874. Do good results arise from that?

I think very good results. The students are very anxious with regard to their monthly reports; the parents are kept informed of facts which are in progress; and thus a domestic influence may be said to be brought to bear upon the whole course of College life.

4875. What do you consider the real advantages of a College over a Board of Examiners?

I think that nothing can supply to young men the place of a College course. It is their great initiation into the art and act of self-government. It should be remembered that in a great degree education arises from collision; young men thrown together, educate each other; whereas with regard to a Board of Examiners, a Board of Examiners must necessarily fix a minimum; you would thus destroy all competition, which is, in my view, a very important matter; and you would raise up immediately a whole host of cram Tutors, who would make it their business to push through the incompetent. A College, I would again say, seems to me something intermediate between school and public life; it retains some of the restrictions of the one, and anticipates some of the responsibilities of the other. Thus a Board of Examiners could give no scope to emulation; and for character and conduct, you would be entirely thrown upon those most uncertain of all things, testimonials.

4876. Would not the requiring a degree to be taken in any of the great Universities supersede the necessity of education at Haileybury?

There are various ways in which that question may be put; you may either send men to the University to a separate College like Haileybury, or you may give them nominations, and send them to take their education where they like in the University; or you may require that, having passed through a University, they should come forward and compete for the Writership. I think that a different answer would have to be given according to those different views of the case. But I may observe, in general, that a College seems to me certainly preferable to a University. I do not think that the mere being associated together at a University would produce those bonds which we desire to see existing in the Civil Service. I suppose that one is conscious that one's own attachment is rather to one's College than to one's University. But it is most highly desirable that those young men should be closely associated together in England. They are going into a species of exile; and if there were no such bond of association between them as there is at present, the possibility is, that to many of them India would be a kind of desert, which, instead of striving to benefit, they would only labour to escape from. I ought to add, that a mere degree at the University would not represent as much information as through successive tests is now exacted and exhibited.

4877. Lord *Monteagle* of Brandon.] Supposing that at Cambridge a particular College, we will assume Downing, were to be appropriated to-morrow for Indian students, and for those only, in what condition, either for the purposes of special instruction and individual progress, or with reference to their contentment and happiness, would those students be at Downing College as compared with Haileybury?

Rev. H. Melvill, B.D.

28th April 1853.

I think they would be much better placed as they are at present. They have greater opportunities for professional study. Besides occupying a separate College in the University, they would be placed in a somewhat invidious position; they would be, after all, isolated from the other students, and thus lose much of the benefit of the general collision; and finding themselves disagreeably placed, they would be very apt to look upon their appointments with dislike, and perhaps even with disgust.

4878. Taking into account the spirit and genius of the University of Cambridge, its historical associations, and its great rewards, have you any doubt that, if there were a set of Indian students, whether in a separate College or mixed up in the University with other students, the best of them would be tempted from their course by the more brilliant rewards which the University would offer?
I have very little doubt that they would. We have lately had an instance at Haileybury of a young man of very high acquirements thinking it better that he should go and take his fortune at Cambridge than remain at Haileybury.

4879. Was not that after he had completed his course of study, and had obtained as high honours as it is in the power of your institution to confer?
Not quite after he had completed his course of study, but when he had fully tried his powers, and thought they were adequate to a wider sphere. I may state the same thing in my own experience. I have a son at Trinity now; he obtained the Bell Scholarship, and he obtained a Scholarship at Trinity on his first sitting: he has, therefore, a good prospect of University success. He might have a Writership, and go to India: but certainly, unless his health should oblige him to do so, he will never give up the chance of a Fellowship for the certainty of a Writership. Thus I think that, by such a change as is suggested, you would lose a great part of the talent which is nominated to the Civil Service, and which the present system retains.

4880. Without wishing to speak disparagingly of our old Universities, are you of opinion, with reference to the branches of English instruction, to the importance of which you have borne your testimony at Haileybury, that those branches of instruction are considered at Cambridge only as secondary in comparison with those which lead to the honours of the classical Tripos and the Senate House?
There can be no doubt of that fact, I should suppose. We have heard of men taking a degree in Law at Cambridge as a sort of resource, finding it difficult to graduate in Arts.

4881. *Chairman.*] What, in your experience, is the general effect of the Haileybury education in forming the character?
I think the effect is decidedly good; I am sure the great proportion of those who leave us for India deserve to be characterized as scholars, as gentlemen, and as men of principle. We receive a great deal of raw, unshapen material, and I honestly believe that it leaves us well fashioned, to face the realities and to perform the duties of life.

4882. Earl of *Harrowby.*] Do they appear to contemplate going to India with satisfaction?
In general they do. I believe the cases are very rare in which there is any unwillingness to go to India.

4883. Lord *Monteagle* of Brandon.] Therefore, if it were justly stated in the year 1830 that those who go to India from Haileybury "have generally a prejudice against India, and everything connected with it," it would not be consistent with your experience of the present state of Haileybury, and the result of the system pursued there?
Decidedly not.

4884. Lord Bishop of *Oxford.*] You are aware that Mr. Mount Stuart Elphinstone stated in his examination in the year 1830, "I think the young men from Haileybury have generally a prejudice against India, and everything connected with it;" have you known any instances of that state of feeling being produced?
No; I cannot call to my mind any such instances. I think the students generally attach great worth to their appointments, and are very anxious to secure them.

4885. *Chairman.*] Is there any system of private tuition at Haileybury?

None

Rev. H. Melvill, B.D.

28th April 1853.

None whatever; the Professor is, in fact, the Tutor; and he is also the Examiner. He makes a point of putting into his examination paper nothing but what he has taught in his Lectures; therefore the student is aware that, by attention to the Lectures, he will be prepared for the examination; there is, consequently, no place for private tuition.

4886. Would it be advantageous that other Examiners should come to the College?

I do not see that there would be any advantage in it. I think it would have the effect of raising up a host of cram Tutors, who would make it their business to prepare men for the final examination. The moment you take it out of the hands of the Professors, you throw it into the hands of cram Tutors; and knowledge which is crammed is never digested.

4887. What is the average expense to a student at Haileybury?

He pays the East India Company a hundred guineas per annum; and I think you may estimate his other expenses at a hundred more. The hundred guineas paid to the East India Company includes the whole expense of his education, his lodging and his board.

4888. Does not the education cost more to the East India Company than the remuneration afforded by the payment of the one hundred guineas?

Decidedly.

4889. Do you know how much?

I should be sorry to speak too positively; but I think the expenses of Haileybury are about 8,000*l.* a year; but I speak under correction.

4890. What is about the number of students?

The number of students has varied in my experience from about 70 to 95; it is less at present; it is only 67, some being absent from sickness.

4891. Lord *Monteagle* of Brandon.] On former occasions it was stated, that instances of great extravagance, and consequent ruin, had occurred at Haileybury; on the whole, what is the conduct of the students now in respect of expense?

Exceedingly good; every check is put upon their expenditure; and I think there is far less temptation to extravagance at Haileybury than there is at either of the Universities. The men are more upon an average in point of income; there is very little disparity of rank, and we take means for very much curbing extravagance; though I do not pretend to say that it never occurs.

4892. Earl of *Harrowby.*] Are they in the habit of having wine parties at each other's rooms?

Not in the same degree as in the Universities: their social intercourse is more in the way of breakfast and supper parties.

4893. *Chairman.*] What is the nature of the discipline at Haileybury?

It is very analogous to that which there is in a College at Oxford and Cambridge. We have one morning and evening chapel. We have our rules as to attendance at lecture, hall and gates; but we exercise, I believe, a much closer superintendence, and have stricter checks on vice and extravagance.

4894. Is there a College Library?

Yes; every student pays ten guineas on leaving to the College Library: thus funds are supplied to purchase books for the constant use of the students.

4895. Is the Library much used?

Very much; the students constantly resort to it.

4896. Is there any provision for the instruction of persons of different religious creeds?

The statutes of the College expressly provide for the case of a Roman Catholic; and by analogy we extend the same privilege to others. We have had Jews, we have had Quakers, and we have now a Roman Catholic.

4897. Lord *Stanley* of Alderley.] Are they obliged to attend the chapel?

They are not obliged to attend the Sunday chapel. The statutes do not expressly dispense with their attendance upon the week-day; but if a conscientious objection were made, we should defer to it.

4898. Lord

Rev. H. Melvill, B.D.

28th April 1853.

4898. Lord *Somerhill.*] You say that you have a Roman Catholic; you have only one?

We have one Roman Catholic at the present moment; but there have been many others.

4899. And no objection has been made on the part of any of them to attend religious worship in your chapel?

Not on the week-day.

4900. Earl of *Ellenborough.*] Did the Jew go to the chapel?

The Jew used to go upon the week-day, I believe; it is not within my own experience. The Roman Catholic goes on the week-day, but not on the Sunday.

4901. *Chairman.*] Are there any instances of Jews having entered the Civil Service of the East India Company?

There are instances.

4902. Lord Bishop of *Oxford.*] You say that they go to the chapel on the week-day, but not on the Sunday. Wherein consists the difference between their going on the week-day and going on the Sunday?

The statute lays down the law, without assigning a reason; it provides for their not attending on Sunday; it says that the Roman Catholic shall attend a Roman Catholic chapel which may be near, and shall bring a certificate to the Dean of the College of his having so attended; there is nothing in the statutes with regard to the week-day service, and we have never had objections raised to this service.

4903. If any objection were raised, should you consider it competent to you to excuse a Roman Catholic from attendance on the week-day?

I should certainly consider it competent to me to dispense with his attendance upon the religious part; I might think it right that he should show himself at a certain hour, in order to carry out the purposes of College discipline.

4904. *Chairman.*] Would you recommend any alteration in the age of admission to the College?

I do not think any great advantage would be gained by any alteration; many wish it to be made 18, but practically the student is generally 18 before he comes.

4905. At what age are students admissible?

Students are admissible at 17, and not after 21.

4906. How long does the period of residence extend now?

Two years, comprising four terms.

4907. Do you think it desirable to extend that period?

I do not; Haileybury is a kind of College in the fields, and I think that the men, if kept very long, would grow weary and restless; if you were to protract their residence much, it might interfere with the good order of the College.

4908. Do you think that on leaving Haileybury they have generally that amount of European instruction which it is desirable for a young man to start with upon his arrival in India?

I think that a great many have; it is another question whether the Government might think it desirable somewhat to raise the test, so as to exclude some few who now go out.

4909. Lord *Stanley* of Alderley.] You stated that four-fifths of the time is now employed in the study of the Oriental Languages, and only one-fifth in European studies?

That is not the legal division; but practically there is so much encouragement given to reading what is called extra on Oriental subjects, that I think that fraction very fairly represents the division of the time.

4910. Do you consider that that one-fifth part of the time which is devoted to European instruction is sufficient to qualify them for the duties they have to perform afterwards?

No; I think it would be desirable that by restricting the Oriental studies there should be more time given to the European.

4911. Would you leave the instruction in Oriental Languages and Literature to be carried on in India rather than in this country?

I think so.

Rev. *H. Melvill, B.D.*

28th April 1853.

4912. Earl of *Harrowby.*] Are you of opinion that the study of the Oriental Languages does not incidentally, like the study of the Greek and Latin Languages, contribute much to the general cultivation of the faculties of the mind, the works in these languages being so very different in quality from those in the others?
I do not wish to disparage Oriental studies; the Sanscrit Language is now becoming almost a classical language; many of our great classical scholars think it incumbent upon them to learn Sanscrit.

4913. But not for the sake of works written in Sanscrit?
Perhaps not so much on that account as for philological purposes.

4914. There are no great philosophers or historians in the Oriental Languages?
My own studies do not fit me to answer that question; I should be sorry to run the risk of quarrelling with Professor Wilson, who might think I was delivering a wrong opinion.

4915. Lord *Colchester.*] Are the Committee to understand that a greater amount of European education might be given by encouraging that branch rather than the Oriental, without making any alteration in the rules of the College?
I think you might restrict the quantity of Oriental reading, and then possibly raise your tests in European studies.

4916. I understood you to say that four-fifths of the time is practically given to Oriental literature, and that so great a portion is not requisite by the statutes, but it is in consequence of the encouragement given to Oriental over European literature?
It is.

4917. Therefore, by reversing the encouragement, and giving it to European literature, instead of Oriental, might you not in that way increase the amount of European study by the students, without any direct alteration of the rules of the College?
If you leave the Oriental Language, without putting some restriction upon them, the students would still, competing amongst themselves, turn to them rather than to the European departments.

4918. You think it would require an alteration of the Rules of the College?
I think so; at least, an alteration would make the thing surer.

4919. Lord *Monteagle* of Brandon.] Do you not think that the suggestion which you made of leaving Sanscrit and other Languages as subjects of voluntary study, is open to the possible danger of withdrawing the student from the English studies, which in England he has the best means of following out?
I did not suggest that you should leave all the Oriental Languages voluntary, but only Sanscrit.

4920. How would you deal with the others?
I think the student should be thoroughly grounded in the grammar and the character of two vernacular languages of the Presidency to which he is going; but I would not let his Oriental studies at Haileybury go further than that.

4921. Do you recollect the evidence that was given upon this subject in the year 1830 by Mr. Mount Stuart Elphinstone?
I do not.

4922. I will read to you a portion of his evidence, in order to ask you how far his expressions convey your views upon this subject. Mr Mount Stuart Elphinstone, in his evidence before the Lords' Committee on the renewal of the last Charter, says, "I think it would be better if in England their attention was directed more to the knowledge which could be acquired only here, than to Native Languages that can better be learnt in India"?
I quite agree with that.

4923. He goes on to say, "and particularly to Political Economy and the general principles of Jurisprudence, not English Law, but general Jurisprudence?
That is precisely the object of our present Law Professor; he does not attempt to teach the technicalities of English Law, but to give large and comprehensive principles which may assist the party in coming to a right conclusion upon any case presented to him.

Rev.
H. Melvill, B.D.

28th April 1853.

4924. Mr. Mount Stuart Elphinstone goes on to say, the students "might, perhaps with advantage, also be instructed in the grammar of the Native Languages, and those who choose, in Sanscrit, &c.; but all other knowledge peculiar to India is better acquired on the spot; while much knowledge is attainable in England which can never afterwards be obtained in India." Does that concur with your views?

Perfectly.

4925. Would a re-modelling of the course of instruction and of the relative proportions of the Oriental and European branches, in the sense recommended by Mr. Elphinstone, in your opinion improve the course of instruction at Haileybury, and the qualifications of the students?

I think it would, decidedly.

4926. Lord *Wynford.*] How much further do you carry the acquaintance of the students with the Classical Languages beyond what they have acquired for the preliminary examination?

I do not know that, in one sense, we can be said to carry their acquaintance further; I mean that we do not necessarily take them into higher books. We have Lectures upon the Greek Plays, the Greek and Latin Historians and Philosophers, and exercises in composition; but further, in one sense, we cannot go.

4927. To what extent is the examination in the learned Languages at last; what do you require from each student at the last examination?

A student who had been lectured upon a Greek Play would have question papers with reference to that Play, critical, historical and grammatical; and he would have put into his hands some paper in composition, to test whether he have any skill in Latin verse or Latin prose; but such skill would not be indispensable to his passing in classics.

4928. You were understood to say, that on entering the College it was a necessary preliminary that he should have a grammatical knowledge of two Greek Plays to commence with; does not he advance at all beyond that in the course of his studies at Haileybury?

He may or he may not take up Plays for his preliminary examination; but in any case he advances in the same sense that he would after being admitted at the University; he would still have to pass examinations in Greek Plays, and in Greek or Latin History and Philosophy.

4929. *Chairman.*] The difference is, that at the later period he is required to show a more accurate knowledge of the subject in which he was examined at first?

Yes; some students are led into a higher acquaintance with works to which they had been previously introduced, whilst others make entrance into new ground; in both cases there is progress.

4930. You have stated the changes which you desire to see in the course of study at Haileybury; are there any changes in the previous examination which you would wish to see introduced?

I think that a point, which has been already adverted to, might have some share of attention; namely, that excellence in one department should not be allowed to countervail for deficiency in another, but that in each department the student should be required to exhibit adequate knowledge.

4931. Lord *Monteagle* of Brandon.] If a student, for instance, is allowed, in consequence of the excellence of his knowledge of a Greek chorus, to come in with such a slight acquaintance with Mathematics as you have described to be the case sometimes, does not Professor Heaviside find considerable difficulty in advancing that young man in his class in competition with others who are better qualified?

Undoubtedly; it will, of course, oblige him to remain in the elements, when he might go on to higher branches.

4932. Might not at least a minimum of the elements of scientific instruction be required as an absolute *sine quâ non* in the preliminary examination?

I think so.

4933. *Chairman.*] Do you think it desirable to make the results of the course through Haileybury more precarious?

I should

Rev. H. Melvill, B.D.

28th April 1853.

I should not think it desirable to make the course through any College very precarious, because if a large proportion of the students felt that their appointments hung in jeopardy, there might be produced a restlessness and uneasiness which would be fatal to good order and discipline.

4934. Lord *Ashburton.*] Do you think it desirable that the students should be admitted at first upon probation?

They are admitted at first upon probation; the first term is considered probationary; and unless at the close of that term the conduct of the student has been satisfactory to myself, I have the power of not allowing his return, or of not allowing it except at such time and on such conditions as I may prescribe.

4935. Lord Bishop of *Oxford.*] Is that a power which is often exercised?

No, I cannot say that I often have to exercise it.

4936. But it has been sometimes exercised?

It has been sometimes.

4937. *Chairman.*] Have you with you here any of the College Examination Papers?

Yes; here is a series of papers on Law, and a series of papers on Political Economy [*producing the same*]; here are also sets of papers in other departments.

4938. Lord *Broughton.*] Have you ever followed the career in India of those young gentlemen who have distinguished themselves at Haileybury?

Yes, I have often had to trace their course.

4939. Upon the whole, should you say that those young students of yours who have distinguished themselves at College, have afterwards made more valuable servants of the Company in India than others?

I have reason to believe that those who have distinguished themselves at College have generally become very excellent civil servants: I should be sorry to have it understood that those who may not have passed so creditably through the College do not often recover themselves in after-life, and make excellent servants also.

4940. Do you think that, in proportion to the excellence of those students who distinguish themselves much at Haileybury, they become after they go to India valuable servants of the Company?

I have reason to believe that it is the case; but my own experience does not extend over a very long time.

4941. *Chairman.*] Is it in the power of the Professors to raise their own standard?

Undoubtedly; a Professor might raise his standard if he pleased, because it is in his own breast to attach its worth to particular mark.

4942. Can you give any reason why they do not do it?

To raise their own standard would be to raise the tests; and that is the part of the Government, not of the Professors. The tests are fixed by Act of Parliament.

4943. Lord *Monteagle* of Brandon.] In your Haileybury course of education, one of the advantages to which you have alluded is, that of association between young men of the same class and educated under the same Professors. Have you had any opportunity of marking whether strong affection and kindliness of feeling is produced also between the Professors and the scholars, and *vice versâ,* which could not be acquired by mere examination by a Board of Examiners?

I think it is impossible to imagine more friendly and cordial terms than the Professors of Haileybury and the students are on. I am sure there is a strong natural feeling of attachment and kindness?

4944. Have you had lately an example of extreme devotedness on the part of one of your late colleagues to his pupils and to his duty under most trying circumstances?

Your Lordship, I presume, alludes to the late Professor Empson. He was taken ill towards the close of the examination; he was struck with the hand of death: but he nevertheless exerted himself, almost in his dying moments, to look over the papers, in order that no injustice might be done to the students, thus manifesting his strong regard towards them; and they on their part manifested their regard to him, by immediately abstaining from the festive meeting, with which they ordinarily

Rev. H. Melvill, B.D.

26th April 1853.

closed the Term. At the present moment they are raising a subscription among themselves, to place a small Tablet in the College Chapel in memory of Professor Empson.

4945. *Chairman.*] Are appointments ever thrown open to competition?

Yes, I have known instances of it; I should rather say that I have known one instance in my own experience; Lord Broughton, I think, gave an appointment a year ago to one of the Irish Colleges. But appointments have been given to Eton, and other public schools; but not during the time of my Presidency.

4946. Do you know whether superior men were obtained by that means?

I believe not; in the case to which I alluded of the appointment given by Lord Broughton, we received a very excellent student, but by no means superior to others in his term, who came by private patronage.

4947. Earl of *Ellenborough.*] Have you many Irish students come to Haileybury?

No, very few.

4948. Had you ever one?

I think we are hardly ever without one or two, if not more.

4949. Lord Bishop of *Oxford.*] Do you think that the expense which you have mentioned amounting to about 200*l.* a year, tends to keep out many persons who would be valuable servants of the Company in India?

I am aware that there is reason to believe, that in the instance to which I refer, in which an appointment was given to one of the Irish Colleges, certain parties were not able to compete on account of the expense which the appointment would entail.

4950. Do not you think that the expense might be very much diminished if Haileybury were made rather an adjunct to one of the great Universities, than a substantive institution?

The expense very much arises from the high price of Oriental books, which would not be diminished by any arrangement such as is proposed.

4951. Lord *Monteagle* of Brandon.] Are you of opinion that there is no reason for the establishment at Haileybury being more expensive than Trinity College, Cambridge, as regards the maintenance of the pupils?

None whatever, except that Trinity has large endowments, Haileybury none.

4952. Lord Bishop of *Oxford.*] But still the expense is, according to your statement, nearly double what it need be at any of the English Universities?

I was not aware, that unless there be Exhibits or Scholarship, the University expense was often so low as your Lordship states; but I include in the sum which I have stated, the whole expense for the year; I include the student's journeys, and his dress, and all his tradesmen's bills.

4953. Earl of *Ellenborough.*] Have you young men from Eton and other great schools?

Yes; we have frequently students from Eton, from Harrow, and from other public schools.

4954. Do you find that they succeed better at Haileybury than those who have been educated privately?

We have many excellent students from private schools; but a public school is, perhaps, the very best preparation for a College.

4955. And still better for public life, is it not?

So far as it goes; but you ought not to leave out the intermediate College, I think.

4956. *Chairman.*] What, in your opinion, would be the effect upon the character of the service if it were thrown open to competition?

I hardly know that I am competent to give a very decided opinion upon that; I certainly have my doubts whether you would have any such amount of competition as would ensure superiority.

4957. Lord *Stanley* of Alderley.] Where would be the difficulty in obtaining any amount of competition?

There is great uncertainty, after all, about the appointment, and great expense; and

and unless appointments were made a prize close at hand, and tolerably sure, there might not be a large amount of competition.

4958. You are of opinion, that without a certainty beforehand of obtaining appointments, there would not be a sufficient number of competent candidates, supposing they had to appear before a Board of competent Examiners?

I have my doubts about it; but I do not feel that I am competent to give a decided opinion upon that subject.

4959. Lord *Monteagle* of Brandon.] Do you think that, even if they were competent to pass an examination, you would have the same security for the good character and conduct of those young men as you would have if they had been under continuous discipline and teaching in a College for a couple of years?

Certainly not; if you had an examination, you should still have a College.

4960. Lord *Stanley* of Alderley.] Would not the object be attained if they had been under the discipline of a College, either at Oxford or Cambridge?

Yes, in some respects. But the University could not bind the men together so much as a separate College does.

4961. Then you are of opinion, that the chief advantage of the education at Haileybury is the association of those young men together previously to their going to India?

Besides that, I think they have opportunities at Haileybury of obtaining a knowledge of Law and Political Economy and of Oriental Languages, that they have not elsewhere.

4962. Did you not state, that the opportunities of obtaining proficiency in European studies at Haileybury are less than they might obtain in other places of instruction in this country?

No; I do not think I stated that the opportunities at Haileybury are less; they are as good as can be desired, provided the students be required to take full advantage of them.

4963. I understood you to say, that you thought that a considerable portion of the time occupied in Oriental Languages and Literature at Haileybury would be much more usefully applied to European studies, and particularly in Law and Political Economy?

Yes: by withdrawing them from Oriental studies, we should be enabled to obtain some higher proficiency in European.

4964. Lord *Monteagle* of Brandon.] There is also instruction given of a scientific and mathematical character by Professor Heaviside?

There is instruction in the different branches of Mathematics.

4965. Supposing more time were placed at disposal for European studies, by a diminution of the portion now applied to Oriental subjects, do you consider that the Mathematical Course might be greatly improved by superadding to their inquiries into Abstract Mathematics, the pursuits of Civil Engineering, and those branches of Applied Mathematics which may be required in India?

I think, if you required that the student in the preliminary examination should be better grounded in Mathematics, then we might go on to give them some knowledge of Civil Engineering, and such other subjects as may be of great importance to them in India.

4966. Earl of *Harrowby*.] Is there any study of physical science at Haileybury?

The students read Astronomy, but only in a popular manner; and they read Mechanics and Hydrostatics.

4967. Is there any instruction in Natural History?

No.

4968. Is there any museum of natural objects?

No.

4969. Would it not be of advantage to persons going to such a country as India to have their attention a little turned to pursuits of Natural History?

Yes; no knowledge of that kind can be given without its being beneficial.

4970. *Chairman.*]

Rev. H. Melvill, B.D.

26th April 1853.

4970. *Chairman.*] In the study of History, is the attention of the students particularly drawn to that portion of History which belongs to our Indian dependencies?

Yes; the Professor gives a course of lectures upon Asiatic History.

4971. Do the Directors of the East India Company ever visit the College during the examinations?

The Directors visit the College twice a year, at the close of each Term, in order to distribute the Prizes.

4972. Has their presence any effect upon the examinations?

I have seen no example myself of it, and I have no reason to think that it has any effect: I have known the son of the Chairman plucked when the Chairman was about to preside.

4973. You never knew of any direct interference in favour of a nominee?

No, I never knew of any interference, either direct or indirect.

4974. Lord Bishop of *Oxford.*] If students are plucked, are they not returned to you with great certainty for examination again?

If a student is plucked, he loses his Term; and if he loses two Terms consecutively, or three Terms altogether, he loses his appointment. He returns to College after a defeat, and he may present himself for examination again; but he may fail again, and may finally lose his appointment.

4975. Earl of *Ellenborough.*] Is any indulgence ever given where the rules of the College would require his expulsion in consequence of his having not passed in three Terms?

If he have lost three Terms, he becomes by law disqualified for returning to the College.

4976. Has there ever been a relaxation of the law in favour of any individual?

Not to my knowledge.

4977. Is that a bye-law made by the Court of Directors?

No; the Court of Directors have no power of making any law with respect to Haileybury; every law with respect to Haileybury is made by the Queen in Council.

4978. Lord *Monteagle* of Brandon.] Have not the cases of irregularity and confusion amongst the students, which formerly used occasionally to occur at Haileybury, been of late years much less frequent and less intense?

There has been nothing that could be called an approximation to insubordination since I have been acquainted with Haileybury.

4979. Lord *Ashburton.*] Do you attribute the improvement in discipline to the increase of the age at which students are admitted?

Partly, perhaps, to that, and partly to the great alteration made in the statutes at the time that I became Principal of Haileybury; the Principal was vested with absolute power, and the possibility of bringing every case to immediate decision has prevented a great deal of disorder and confusion.

4980. Is the certificate of rank given to a student on leaving Haileybury determined by his conduct and acquirements during the four Terms he has spent at the College, or is it dependent upon the examination at the last moment?

It is determined by a review of his whole course, including both his proficiency in literature and his deportment and behaviour.

4981. *Chairman.*] You consider that the going through Haileybury has this advantage, that you have more of a safeguard for the character of the civil servants than you would have if they were educated in other independent places?

Yes, I think so. I think you would have nothing to depend upon but testimonials of character and conduct, if you merely submitted them to a Board of Examiners.

4982. Does it often happen that a student is dismissed in consequence of immoral conduct in College?

It does not often happen; it does occasionally, but not often.

4983. Supposing a young man of not very good moral character, but of sufficient

intellectual

Rev. H. Melvill, B.D.

28th April 1853.

intellectual attainments to pass the last examination; would any defect in his moral character prevent him from being passed into the Civil Service?

In the whole of his career, defects in his moral character endanger his appointment; he may be rusticated; and if rusticated twice, so as to lose two Terms successively, he loses his appointment.

4984. Earl of *Ellenborough.*] Might he not be rusticated for many things which were not inconsistent with the character of a gentleman; would he not be rusticated for any act of insubordination?

Undoubtedly.

4985. But, of course, he would be expelled for anything inconsistent with the character of a gentleman; he would not be allowed to stay if he had done anything of that kind?

He might be rusticated upon one occasion, and a fresh trial might be given to him; and if he did not appear to have improved in his character, he might be rusticated again, and so lose his appointment.

4986. If he had told an untruth, what would be done?

The statute is express upon that; it requires him, for the first offence, to be rusticated, and for the second to be expelled.

4987. *Chairman.*] Do you consider that going through the course of education at Haileybury ensures a higher moral tone than having obtained a degree in one of the great Universities?

No, I do not say that; I plead only for the advantage of a College course. I am quite aware that a College develops much evil; but it develops it rather than creates it; and I think it is infinitely better that that evil should be developed here, where it may be corrected, and where, if it is not corrected, it may exclude the man from the service, than that it should come out in India, where unrestrained it may poison all the springs of public life.

4988. From the correspondence which you have maintained with former pupils at Haileybury, have you formed any opinion with respect to the system of training of civil servants after they have left this country, and have arrived in India?

No, I have had no opportunity of forming an opinion upon that myself; I have only read the opinions of others.

4989. Earl of *Ellenborough.*] The restraint at Haileybury is greater than the restraint at the Universities?

I think it is much stricter.

4990. Do you think it advisable that, after a young gentleman has been subjected to this restraint, he should be at full liberty for a year and a half at Calcutta?

He must necessarily be exposed to considerable danger; but it would be difficult, and might perhaps be unwise, to continue the same sort of restraint when a young man has passed both through school and through college.

4991. Would not you think it more prudent, upon the whole, to continue a certain degree of restraint, by placing him first in the Mofussil, where he would have few opportunities of doing anything wrong, under the care of a superior servant of the Government?

I should have thought so; and I am rather inclined to think, that, in a measure, that course is pursued in some of the Presidencies; I think it is at Bombay.

4992. Lord *Glenelg.*] Have not you understood that that course is more frequently pursued in Bengal than it used to be?

No; I have been given to understand that the student remains at Calcutta till he has passed in two languages.

4993. *Chairman.*] Are you of opinion that it is desirable that the future civil servant should leave this country at the age at which he generally leaves it now?

I think the age of admission into Haileybury is sufficiently high, and the period of residence there sufficiently long; if Oriental acquirement is to be deferred till arrival in India, it will not do to throw that arrival to a later date.

4994. Lord *Monteagle* of Brandon.] In the event of having more time at Haileybury for general English pursuits, might not the mathematical pursuits be advantageously extended to matters of mixed science, such as to Engineering. For example,

Rev. H. Melvill, B.D.

28th April 1853.

example, you are well acquainted with the course of instruction which was formerly given at Cambridge by Professor Farish, and is now given by Professor Willis, on the application of science to the purposes of manufactures: do not you consider that such applied Mathematics, together with the knowledge of improved machinery and modern inventions, might, in the event of there being more time disposable at Haileybury, be made advantageously a branch of education?

I think it would be greatly for the advantage of the civil servant that he should be in possession of such knowledge; the only point is, whether he have time for its acquisition.

4995. Take, for example, the possible exhibition to young civil servants of the most approved machinery for cleaning and making up cotton, and the manufacture of sugar; would not all that be very advantageous to them, in your judgment, in their future destination in India?

I should imagine so; but of course those who are better acquainted with the career of the civil servants in India, know more accurately than myself the precise instruction that would be useful.

4996. From your Cambridge experience, as well as your knowledge of the present students at Haileybury, have you any doubt that such branches of instruction would be most agreeable and most usefully exciting to them?

I have no doubt of it.

4997. *Chairman.*] Are you acquainted with the fact, that under the last Act, till it was amended in Parliament, four candidates were required to supply one person chosen for nomination to Haileybury?

I am quite aware that there was such a clause in the last Act.

4998. Are you aware why that change was made?

I was not connected with the College at that time, nor for many years after; and therefore I am not prepared to state anything in respect to it.

4999. Lord *Monteagle* of Brandon.] The original statutory arrangement in 1833 required the Governor-general in Council to make a prospective estimate of the number of vacancies in the Indian establishments, and the Board was to certify what number of persons should be candidates for admission to Haileybury, and what number should be admitted as students. Four were required to be recommended, out of whom the one most eligible was to be appointed. That was departed from in the year 1837, and the present system was adopted. Now which of the two systems do you think would be best for the interests of the College?

I have been already asked whether I thought that a system of competition would produce better civil servants, and I was obliged to say that I did not feel that I had sufficient data for forming a correct opinion upon the subject; and of course I must make the same remark with respect to the proposed four-fold system.

5000. *Chairman.*] At present the competition is very great for nominations?

Yes; I believe it is a species of patronage, which it is difficult to obtain.

5001. Lord *Monteagle* of Brandon.] Is the competition now of an intellectual kind, or is it competition of interest?

I presume, of course, it is competition of interest; but you have intellectual competition before you admit the candidate.

5002. *Chairman.*] If the prize held out is now so very much coveted, what is your reason for supposing that the subjecting the candidates to competition would diminish the number so much as not to give you an adequate supply for the Civil Service?

At present a young man knows, that, if he qualify himself up to a certain point, he is sure of a nomination. But this is very different, so far as encouragement is concerned, from knowing that he may qualify himself far beyond that point, and yet altogether fail.

5003. Lord *Monteagle* of Brandon.] Would not the contingency of obtaining such a reward as a Writership in India, to be distributed to the best amongst four, be at least as strong an inducement as the inducements which take men into the still more unrestricted competition of our professional life at home?

It might be. But then I think it must be remembered, that when he has obtained a nomination, for several years he is in great risk and at great expense; and

Rev. H. Melvill, B.D.

28th April 1853.

and I suppose a father in training a child, with a view to the Civil Service, would take those things into account.

5004. If the education that is required be a species of education peculiarly and exclusively adapted to India, then undoubtedly, if the student fails in obtaining an Indian appointment, it is a total failure; but if the system which has been pointed out in your examination, namely, a more general system of European instruction, were adopted, then, even if a failure took place there, would not the system of education that had been pursued be available for British objects as well as for Oriental ones; because, although the Sanscrit might be useless, the Mathematics would be available?

I suppose that the way in which we teach Law, which is not by instructing a man in technicalities, but by giving him principles, would not at all fit a man for the English Bar; and if he was to be thrown upon his own hands after passing through Haileybury, I think he would find himself at a disadvantage as compared with many others in the struggles of an English profession.

5005. Does not a man's special training for the Bar commence after the period when a student has completed his Haileybury education?

Yes, it does, at least in many cases; but the one would start full of hope; the other cowed by disappointment.

5006. Taking the new career of the Moral Science Triposes, which is now opened at Cambridge, is it not the fact that the general training in Law which is now proposed to be given, intended exclusively for English purposes, is precisely of the same character and of the same general application as the law-training at Haileybury?

It may be; and perhaps I am rash in endeavouring to carry on any argument upon the point; because of course it is a point upon which I have very little to guide me. I merely ventured to suggest my doubt—it may be an erroneous doubt—as to whether the competition would be so large as to ensure superiority on the part of the civil servants.

5007. Lord *Elphinstone.*] If the appointments both for the Civil Service and for the Army were thrown together, and if those young men who showed the greatest degree of talent and aptitude were selected for the Civil Service, might not that be a means of getting a superior set of civil servants?

You might by that arrangement be likely to obtain good civil servants; but I think the feeling would be that you threw a kind of slur upon the Army, leaving it to be officered by the dregs of the Civil Service.

5008. That is not what is intended by the question; but that some men are more studious, and show greater aptitude for learning Law, and for studies which would qualify them for the Civil Service than others; and other men might be equally good as soldiers?

I suppose that, practically, that is very much what takes place. A patron appoints to the Civil Service a party whom he would not appoint to the Army. If he make a mistake, it often corrects itself. It is not at all unfrequent that a student on coming to Haileybury exhibits a distaste for the Civil Service, on account of the study that has to be gone through, and he exchanges his appointment for the Army.

5009. You would agree that it is no slur upon the Army generally that they select the cleverest men, who have made the greatest progress in the scientific branches, for the Artillery and for the Engineers?

I am not sure that we can fairly identify the case of members of the same service, and members of two different services; but, at all events, the Indian Army is not officered by the leavings of the Engineers and Artillery; for by far the largest part of the Infantry Cadets, and the whole of the Cavalry, go out direct.

5010. But if you threw the whole of the appointments together, they would be in that way all branches of the Indian service?

It might be so; branches of the same service, but different branches.

5011. Do you happen to know why the choice was made of the Teloogoo Language as the language to be taught to students going to Madras rather than the Tamul?

Rev. H. Melvill, B.D.

28th April 1853.

I imagine that, practically, the Tamul ought to be taught as much as the Teloogoo Each is the language of a very large section of Her Majesty's subjects; but as we could not teach all, the Teloogoo has been selected.

5012. Is not the Tamul spoken by a greater number of people?

I do not know which language is the more diffused; but I repeat, that I believe instruction in the Tamul ought to be given; and in some re-modification of the Oriental system, it might be introduced.

5013. Earl of *Ellenborough.*] If two young men were examined, both having nominations and both disposable either for the Army or for the Civil Service, and one distinguished himself in Jurisprudence and the other in Engineering, you would not consider it a reflection upon the gentleman who had distinguished himself in Engineering to put him into the Army, while the other gentleman was put into the Civil Service?

It seems to me probable that, in such a case, the one will have been reading with an express view to a military appointment, the other to a civil; if so, the competition is reduced by the previous decision of the competitors; and though it could be no reflection on the man who had given himself to Engineering that he was made an Engineer, the evidence is still wanting that he who sought the Writership has any great relative superiority.

5014. It is assumed that the education of the two has been the same; then does it not appear to you that to take the man who had distinguished himself in Jurisprudence, and to put him into the Civil Service with a view to the Judicial Branch, and to take the gentleman who had distinguished himself in Engineering, and to put him into the Army, would not be in any respect a reflection upon either of them?

Admitting that there was no reflection upon either; admitting also that you secured superior civil servants; I cannot divest myself of the idea that the Army would feel lowered by being recruited only from disappointment and defeat.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday next,
Two o'clock.

Die Martis, 3° Maii 1853.

LORDS PRESENT:

The LORD PRESIDENT.	Lord COLCHESTER.
The LORD PRIVY SEAL.	Lord SOMERHILL.
Marquess of SALISBURY.	Lord WHARNCLIFFE.
Earl of HARROWBY.	Lord WYNFORD.
Earl of ELLENBOROUGH.	Lord MONTEAGLE of Brandon.
Lord ELPHINSTONE.	Lord BROUGHTON.
Lord WODEHOUSE.	

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

J. C. Marshman, Esq.

3d May 1853.

JOHN CLARKE MARSHMAN, Esquire, is called in, and examined as follows:

5015. *Chairman.*] WILL you be so good as to state to the Committee how long you have resided in India?

I went out to India a second time 29 years ago, and have resided ever since continuously in or near Calcutta; I had been there for 15 years before; I have been altogether more than 40 years in India.

5016. At the first period, were you there as a child?

I went out very young with my father, and then came home, and went out a second time, in the year 1824, and have continued there ever since.

5017. Were you ever in the civil service of the East India Company?

I was employed for 12 years as the Bengalee translator for the Government; from 1840 to the period of my leaving Calcutta, in January last.

5018. As an uncovenanted servant?

Yes.

5019. Is your knowledge chiefly connected with that part of India?

My personal knowledge is chiefly connected with Bengal. The language of Bengal is just as familiar to me as my own. I established the first Bengalee newspaper that was ever published, in the hope of encouraging a spirit of inquiry among the Natives. I have also been for 18 years the editor of a weekly journal, called "The Friend of India." Those various occupations brought me into direct communication with all classes of the Native community, as well as with the official and non-official European community, and enabled me to ascertain, to a great extent, the character and working, as well as deficiencies, of our institutions.

5020. Earl of *Ellenborough.*] What parts of India have you visited in person?

I have visited nearly the whole of Bengal, and have been in the North-Western Provinces as far as Allahabad.

5021. Lord *Broughton.*] Were you ever in either of the other Presidencies of Madras or Bombay?

J. C. Marshman, Esq.

3d May 1853.

I have been three times at Madras, but never at Bombay; I have also been twice in the Tenasserim Provinces, and once to Ceylon.

5022. *Chairman.*] Have you considered the subject of the appointment and training of the civil servants?

Yes; it has been very much discussed, and I have taken a considerable share in the discussions which have been carried on for some time in India upon that subject

5023. What is your opinion, first of all, with regard to their appointment to Haileybury College?

The appointments to Haileybury College are now made exclusively by the Directors. It is the mode in which they are remunerated for the Government of India; and although it is said that there is rather a stringent examination of the young men before they enter Haileybury, yet we generally find that a nomination by one of the Directors stands good; and that although a candidate may probably be rejected once or twice, he is in almost every case sure of the appointment at last; so that any individual who obtains a promise of a Writership from a Director, may make certain that his son will obtain it.

5024. Lord *Broughton.*] When you say that the nomination stands good, do you mean that it results in an appointment, or that it is the appointment that ought to be made?

I mean that although there is this examination, which is said to be so stringent, and a number (I do not know exactly what proportion, for it has never transpired) of candidates are unable to pass the preliminary examination, and are therefore remanded and brought up again once or twice, and I think occasionally three times, yet they generally do pass eventually; and those who are utterly unable to pass go out in the cavalry; that is, they receive cavalry appointments.

5025. *Chairman.*] Practically, do you consider that many unfit men go out?

I think it will be admitted that although we have some men of very extraordinary ability in the civil service, yet we have, even at the present time, rather too great a proportion of drones. These men are usually called the dead weight of incompetency in India. It has been remarked that within the last 10 or 12 years the number of incompetent men has been rather on the increase. Although we have lately had some men of very extraordinary ability, and who will rise to great eminence in the service, still the number of individuals who ought not to be sent out at all is rather greater than it ought to be under any circumstances. Having once obtained a footing in the service, they must continue in it, and rise by the tide of seniority, unless any charge of pecuniary corruption is substantiated against them, or unless they are found to be mentally incompetent for all work.

5026. Are you acquainted with any Government in any part of the world, the service of which is not performed by a set of men, a portion of whom are grain and the remainder chaff?

No. I cannot say that the civil service in Bengal is an exception to the general rule. When I was down in Ceylon, I made particular inquiries into the character of the men in the civil service there, and it appeared to be acknowledged that they were rather of an inferior quality to those in Bengal; but that arises in some measure from the Government having broken through the rule of appointing only men in the civil service to high office, and having sent out individuals from this country to take some of the most important offices in the island.

5027. Earl of *Ellenborough.*] Is not the remuneration of the officers in Ceylon very much inferior to that of the officers in India?

I think that an officer who in India would be remunerated at the rate of 2,500 rupees a month, or 3,000 *l.* a year, in Ceylon only receives 1,000 *l.* a year, and in some instances less.

5028. May not that be one reason why an inferior class of persons go to Ceylon?

I have no doubt that it has a considerable influence upon the character of the service. But, with reference to the question to which I have been making a reply,

reply, I would observe, that if the examination here was more stringent, and the nominations more open to rejection, we might calculate upon having a larger number of able men in the service.

5029. Had you an opportunity of seeing the young gentlemen who were at Calcutta educating themselves for the service?

I am personally acquainted with very nearly two-thirds of the whole civil service.

5030. What do you think of their general tone of manners and conduct?

I think that they are distinguished by a high gentlemanly feeling, and by a very high principle of honour.

5031. Without exception?

There are of course always a few black sheep; but I think the general tone of the civil service is very high.

5032. Did you ever hear of a young gentleman amusing himself by firing from a cross-bow earthen pellets at the Natives as they were walking in the street, and shooting out a man's eye?

I do not recollect to have heard of it; but I think such a youthful frolic is not at all improbable.

5033. Did you ever happen to hear of the same gentleman forcing himself through the gate of Fort William, by which carriages are not admitted; and, on being told by the Soubahdar on guard that it was not proper that he should enter by that gate, raising his whip and striking the Soubahdar?

Yes, I did hear of it.

5034. Do you think that that was an exception altogether to the general course of conduct among them?

I think it must be considered as an exception. Some of the young men in the College at Calcutta are exceedingly wild, which forms a particular reason for not allowing them to remain (as they are now allowed to do) in Calcutta for two years. When the College at Haileybury was established, Lord Wellesley limited their residence in Calcutta to one year. The Government afterwards enlarged it to 18 months, and subsequently, I think within the last seven or eight years, they have, rather preposterously, allowed those who were unable to pass, and who therefore were the most idle, to remain in Calcutta for two years. Since I returned to England I have heard that Lord Dalhousie has positively sent home one young man who was unable to pass in two years, and dismissed him from the service; but this is the only instance that has occurred within the last 15 years.

5035. *Chairman.*] Do you consider it necessary to have a body of men trained in England for the Civil Service in India?

I think it is the general opinion that you require a body of men specially trained for the duties of the Civil Service; that you will not find any body of men out of the service in India capable of filling the offices which devolve upon them; that it is necessary to give them an especial training for that service; and that, having given them those appointments, it is necessary to assure to them the prospect of a definite succession to those offices, in order to render the service valuable, and to induce them to enter it, and plant the hopes of their lives in it; and the more strict you make the examination in this country, the more necessary is it that the prospects which you hold out to them should not be interfered with by interlopers.

5036. Lord *Broughton.*] Do you think that the education which young gentlemen receive at Haileybury in any way renders them capable of efficient duties in India?

I think that the system at Haileybury is capable of very great improvement; more especially in reference to the Oriental languages. At present, we consider in India that too large a portion of the time of the students is devoted to the study of Oriental languages at Haileybury, and, more especially, to the study of the Sanscrit language, for which they never have any use whatever; and that a great improvement might be made in the system of education in this country; that the Home Government should provide for the completion of their English education here, and leave the Government in India to provide for their studying and making adequate proficiency in the Oriental languages. I think also that

J. C. Marshman, Esq.

3d May 1853.

this has become much more apparent within the last two years. The Government of Bengal during the last year passed a number of rules for the examination of the young men in the Civil Service, after they had entered upon the duties of the service. Formerly, they received a certificate of qualification from Haileybury, and then proceeded to India, and entered the College of Fort William in Calcutta. As soon as they were declared qualified for the public service by their knowledge of two languages, they were immediately placed in a public situation; and no inquiry was afterwards made whether they were acquainted with the languages of the country, or not. At the same time, it was perfectly notorious that many of those who had obtained a certificate of qualification at Haileybury, and had been declared qualified for the public service, by their acquaintance with two languages, in the College of Fort William, were utterly unable to do anything in either; they were not able to understand a sentence of what the Natives said to them in Bengal, or to render themselves intelligible to the people. In these circumstances they were placed in the Courts; and the Government never subsequently made any inquiry whether they had obtained a sufficient knowledge of the language or not; but a proposition was made by Mr. Halliday, when he was Secretary to the Government of India, and it was matured by Mr. Grant, and is now a rule of the service, that every civilian shall pass two subsequent examinations, not only in reference to the languages of the country, but also to the criminal and fiscal law, and the institutions of Government. The second examination is still more stringent than the first. These examinations secure a perfect acquaintance with the vernacular tongue of the district; for the student is obliged, when he passes his examination, to converse freely with the Natives, in the presence of the Committee. He is obliged to sit down, and render into the Bengal language, or into the language of the district, whatever papers may be put into his hands; to read off the most crabbed Bengal or Oordoo handwriting, and to translate the paper into English. Any one who is able to pass this test may be safely pronounced to be perfectly fitted, by his knowledge of the language of the country, for the performance of public duties. Under these circumstances, the necessity of studying the Oriental languages at all at Haileybury is almost entirely removed; and the Government of this country is now at full liberty to devote its entire attention (at least, so we have been accustomed to think in India) to the completion of the European studies of the members of the civil service before they go out to India.

5037. So that, if there were no institution like Haileybury, a young man going out to India with the knowledge which he had acquired in our English universities, or at any of our great public schools, or at any institution for training young men, might, with the education which he would afterwards receive in India, be fit for any branch of the service in India?

It is quite possible that this may be the case; but I have been 29 years away from England, and, therefore, this is not a question upon which I can speak with any degree of certainty. I can only observe, with reference to a remark made by Mr. Melvill, in his evidence given in another Committee, that the ground upon which the continuance of Haileybury was justified, was that it provided for the Oriental qualifications of the students; that the Government in India has now taken that question into its own hands; and that this argument for the continuance of Haileybury is entirely removed: so that it is for the Government of this country to determine whether young men can be best qualified for the service, in the branches of European education, at Haileybury, or at any other institution.

5038. Earl of *Ellenborough*.] What annual sum do the young gentlemen receive at Calcutta for a maintenance during the time that they are studying there?

I think 360*l*. a year, and an allowance for house-rent besides.

5039. What do you suppose their expenses are?

This depends very much upon their own individual dispositions. Some men get into debt, but not to the extent they formerly did. In former days they sometimes left Calcutta 5,000*l*. sterling in debt; I do not think that at present any student leaves Calcutta more than 1,000*l*. in debt. Many of them are enabled to leave it without being involved to an extent of more than 200*l*. or 300*l*.

5040. What

5040. What interest do they pay for the money they borrow?

They generally go to the Agra bank, and I believe they have to pay 13 or 14 per cent. there, including insurance.

5041. Is it not more than that?

Not more than 14 per cent. I believe.

5042. *Chairman.*] Do you consider that the study of the Oriental languages at Haileybury ought to be entirely done away with, and that it is not desirable to give them some knowledge at Haileybury of the Oriental characters, and of the first grammatical elements of the language?

I think that even if you were to do away with the study of the languages altogether in this country, the students would not lose much; but if they are to pay any attention to the Oriental languages here, it should be only the elements. A number of missionaries go out to India without any previous training in this country, and they very soon acquire a complete knowledge of the vernacular languages, and are, in fact, the very best Oriental scholars in India.

5043. Earl of *Ellenborough.*] They have not succeeded in getting many converts, have they?

The number of converts differs in different Provinces; perhaps they have fewer converts in Bengal, or in the North-Western Provinces, than in other districts.

5044. Did you ever communicate with the American missionaries at Allahabad?

Yes, I have been in constant communication with them.

5045. Have you not heard that they never got a convert except where they had an office to dispose of?

No, I have never heard that. I believe the number of converts there is very few indeed; but in other parts the converts of the American missionaries have been very numerous indeed, more especially in the Tenasserim Provinces, and in the Province of Pegu, which we have just conquered, where there are converts to Christianity by thousands.

5046. Is not the American mission a very wealthy establishment?

No; on the contrary, I do not think the missionaries receive more than half the salaries of the European and the English missionaries.

5047. Earl of *Harrowby.*] Is there not a considerable number of converts about Kishnagur?

There are a great number at Kishnagur and in the villages to the south of Calcutta.

5048. *Chairman.*] Are there many missionaries from other European countries?

There are a good number of Germans, and a great number of Americans.

5049. Earl of *Ellenborough.*] Have the Roman Catholics made many converts?

I do not think the Roman Catholics have made many converts within the last half-century, or during the time of which I have any knowledge.

5050. Not up at Agra?

Not recently; I do not think they have made any converts worth mentioning within the last half-century.

5051. Have they made many converts amongst the Europeans by means of their establishments for education there?

Very few indeed; I do not think they have made a dozen converts: scarcely half-a-dozen.

5052. Lord *Wharncliffe.*] Where was the seat of the missionary establishment in Pegu?

At Rangoon.

5053. How long have the American missionaries been employed in that Province?

The mission was originally established in 1812, but the missionaries removed from thence upon the conquest of the Tenasserim Provinces to Moulmein; and subsequently Dr. Judson, who was at the head of the mission, sent some missionaries

J. C. Marshman, Esq.

3d May 1853.

missionaries to Rangoon, where they have been labouring very diligently under that despotic Government.

5054. Have they ever been interfered with by the Government?

Not directly; but there has always been a great deal of difficulty regarding their converts; they have been subject to a good deal of persecution: not perhaps so much directly from the Government as from its officers.

5055. *Chairman.*] To return to the education of the civil servants, will you state what you think ought to be the principal object of the education at Haileybury?

I think that the object of the education in this country should be to complete the European education of those who are sent out in the civil service, because when they reach India they have very few opportunities of completing their education; their time is immediately occupied with acquiring a knowledge of the Native languages; and when they are once appointed to public situations, they have no leisure whatever for subsequent study.

5056. Earl of *Harrowby.*] Do you think it is desirable that they should leave England earlier, for the purpose of their becoming at an earlier age imbued with Indian knowledge?

No; I think it would rather be desirable for them to leave a year later than a year earlier, as they do now.

5057. Earl of *Ellenborough.*] Would it not be particularly injurious to their health to take them out to India at an earlier age?

I think it would; nor is it at all necessary. If they come out at the age of one or two and twenty, that is as early as is desirable.

5058. Earl of *Harrowby.*] Would it not be desirable for them to attend the Courts while they are waiting in Calcutta to learn something of the law?

I scarcely think it would be necessary, because our object should be, if possible, to send them out of Calcutta at as early a period as possible. At present they are allowed to remain there from six months to two years; but it is exceedingly desirable that they should be kept in Calcutta as short a period as possible, and that they should be separated from the temptations of a metropolis as early as possible. I believe it is the intention of Lord Dalhousie to require them to leave Calcutta at the end of six months, and then to appoint them to some office in the Mofussil.

5059. What would be the advantage of their staying six months at Calcutta?

To enable the members of Government to become acquainted with them, and to avoid banishing them at once into the interior of the country immediately upon their arrival in India.

5060. Marquess of *Salisbury.*] You stated that their salary is 360 *l.* a year when they are at Calcutta; do they get a considerable rise of salary when they leave Calcutta?

Very little; only 400 rupees a month, or 480 *l.* a year, which they obtain immediately upon their appointment to the service. All the civil servants, when appointed to office in the interior, are made assistants to the Magistrate and to the Collector in some district; they then receive 400 rupees a month: subsequently to that, they receive 500 rupees a month, still continuing in the same line; they afterwards obtain 700 rupees a month; and at the end of eight or nine years become full Magistrates upon 900 rupees. I might here mention, that whereas formerly their rising to an appointment of the value of 500 and 700 rupees a month depended upon the examinations they passed at Haileybury and in Calcutta, the Government have now ordered that their promotion to the superior grades of 500 and 700 rupees a month shall depend entirely upon the examination they pass after they get into actual service.

5061. Is there any great anxiety on their part to get away from Calcutta?

It depends in a great measure upon their own individual disposition. Some young men are very fond of remaining in Calcutta, and entering into all its dissipation; there are others again of a different turn of mind, who are anxious to escape from it as soon as possible.

J. C. Marshman, Esq.

3d May 1853.

5062. Earl of *Ellenborough.*] What opportunity have the members of Government of becoming acquainted with the young gentlemen other than during a few minutes before dinner?

They mingle with the Secretaries of the Government and the members of Council, and the higher members of society. There is a good deal of intercourse kept up between the younger and the senior branches of the service.

5063. Marquess of *Salisbury.*] Have not, in many instances, some of the superior civil offices been given to military men?

Yes; some of the superior offices in the Non-regulation Provinces, but none in the Regulation Provinces. The Government never appoint, either as Judge of the Sudder, or Revenue Commissioner, or as Civil or Sessional Judge in the Regulation Provinces, or as Collector or Magistrate, any person except he be from the civil service.

5064. Earl of *Ellenborough.*] They have not the power of doing so?

There is not the power of doing so.

5065. Marquess of *Salisbury.*] Have those military persons who have been appointed to those civil offices discharged the duty in a less able manner than others who have been bred up to the civil service?

I do not think there is any instance of the Government having been dissatisfied with the mode in which they have discharged their duties.

5066. Earl of *Ellenborough.*] Do you think that any part of India is better managed than Rajpootanah, especially the Civil Government of Adjmeer?

I think it is exceedingly well managed, but I cannot pronounce that it is better managed than the Provinces in the North-West, which are under Mr. Thomason's government, and the administration of which is in the hands of the civil service.

5067. Do you know anything of the administration of Saugor?

Not much; I know nothing of it personally; I have been in communication with many of the officers, but I could not speak with any degree of certainty regarding it.

5068. There has been no outbreak there since Mr. Caldecott was sent there in 1843?

None at all, I believe.

5069. He was sent there immediately after the insurrection?

Yes, he was.

5070. He was placed at the head of the Commissioners and Deputy Commissioners who were sent to govern the country?

Yes.

5071. Lord *Broughton.*] Do you attribute the excellence of the administration in the North-Western Provinces to the particular form of the administration, that is to say, to there being a Lieutenant-governor without a Council, and assisted only by an able Secretariat; or is it in your opinion owing to any other circumstance, such as the qualities of a particular individual, Mr. Thomason, or any other gentleman who may have had the government?

The superiority of the police is evidently in some measure owing to the superior spirit of independence of the people themselves; but the general superiority of the Government of the North-Western Provinces is evidently to be attributed to the system of Government that has been established there in the hands of one man, and he the ablest man in the Province, who is perfectly acquainted with the character of every one of his subordinate officers: he spends four months in every year in travelling through the various districts, so as to visit every district personally, I believe every other year, or once in three years; and he thus becomes fully acquainted with all the European and Native officers of the country. The Natives have free access to him; and when he is thus moving about, he is altogether unfettered by any Council, and at the same time has a very able Secretariat. Mr. Thomason has also disregarded the claims of seniority to a much greater extent than they have been set aside in the Bengal Provinces.

5072. Do you think that that sort of administration by a single Governor, without

J. C. Marshman, Esq.

3d May 1853.

without a Council, would be equally applicable to the two Presidencies of Bombay and Madras?

I think the only difficulty in the way has reference to the existence of separate armies. It would certainly be of very great advantage to Madras and to Bombay if the ablest men at those Presidencies were placed in the same position that Mr. Thomason occupies in the North-Western Provinces; but military men seem to think that there would be a degree of embarrassment in the management of the army, if a Commander-in-Chief, fresh from England, was brought at once in contact with a Governor recently chosen from the civil service; and as it is indispensably necessary to keep the armies of the three Presidencies distinct, that is a very grave consideration; but that appears to be the only difficulty.

5073. Earl of *Ellenborough.*] Does not the success of such a Government as that which is administered by Mr. Thomason depend altogether upon the integrity, ability and zeal of the person to whom it is confided?

Not altogether; because, if he were fettered by a Council, even the ablest man would not be able to carry on the Government satisfactorily. If Mr. Thomason had continually two members of Council to consult, he would be unable to act with so much energy and decision; still the efficiency of the administration must, in a great measure, depend upon the character of the individual placed over it.

5074. If he is a weak man, he falls into the hands of his Secretary?

Entirely so.

5075. Marquess of *Salisbury.*] Referring to what you have said about the education necessary for filling civil offices, will you state whether the same kind of education is pursued with regard to military officers who are appointed to civil offices?

There is no particular education whatever given to them. The Government commonly selects the best officers, and places them in subordinate situations at first as mere assistants, upon a small salary; and they gradually rise to the chief control and administration of a Province.

5076. Are those Provinces as well administered as those which are governed by civil officers regularly educated?

There is a considerable difference of opinion upon that subject; but it must be remembered that they have not the Cornwallis Code to administer, generally speaking, but an extremely simple civil code, which does not require any elaborate study.

5077. Lord *Broughton.*] Do not you think that the establishment of railways, and, probably, of electric telegraphs, will very much facilitate the administration of India by a single head, by giving greater power to the Governor-general in Council than he now has of controlling the operations of the Lieutenant-governors at Madras and at Bombay?

I think the establishment of the electric telegraph will give immense advantages to the Governor-general for controlling the whole of the administration of India, wherever he may be. The printing-machine which the Court of Directors are now sending out to India for their electric telegraph will print 15,000 letters, I believe, in the course of a single hour, and enable the Governor-general to receive a despatch, of the length of a whole sheet of foolscap, from any part of India, in the course of a few hours, and to send a reply back before the close of the day.

5078. Earl of *Ellenborough.*] From your knowledge of Indian correspondence, do not you think that a person writing a letter there, would scarcely have entered upon his matter when he had completed a sheet of foolscap?

The establishment and use of the electric telegraph would render it absolutely necessary to curtail the correspondence.

5079. *Chairman.*] To return to the state of the civil code in India, will you state what that consists of at present?

In what are called the Regulation Provinces, it consists of the Cornwallis Code, which is founded upon a previous code drawn up by Sir Elijah Impey, somewhere about the year 1780. This code has been elaborated and improved upon, as they suppose, ever since, till we have now no fewer than 12 folio volumes of

Regulations.

J. C. Marshman, Esq.

3d May 1853.

Regulations. We have, in addition to that, the constructions which have been put upon the Regulations by the Sudder Court, and all circular orders explanatory of them, and five or six volumes of reports which the inferior Courts are obliged to conform to; because if they were to decide contrary to any acknowledged precedent, the decision is likely to be upset in the Sudder. We have, therefore, a code comprised in some 17 or 18 volumes; it is exceedingly voluminous, and very intricate, and affords great opportunities for the exercise of Native intrigue and chicanery.

5080. Earl of *Ellenborough.*] Is there any index?

Yes, I think there are two or three indexes to the code, which have been published under the sanction of the Government.

5081. Are they really good ones?

The making a good index is almost as difficult as making a good code; but I think that one of them, drawn up by Mr. Dale, and subsequently continued by others, is a very good index.

5082. Do you suppose that any gentlemen in the civil service ever read through all those volumes?

I think that some of the Judges in the Sudder must be fully acquainted with their contents.

5083. But, in general, they look at the index?

They naturally look at the index to discover the law upon any particular subject which they have occasion to refer to.

5084. But any gentleman who had never been educated for the service might do the same thing, might he not?

The gentlemen who are appointed to the office of Civil Judge (and this is one of the anomalies of the present system) are placed upon the Bench, and have to hear appeals from all the subordinate Courts, and to control the general administration of civil justice throughout the district, before they have had any occasion or opportunity of making themselves acquainted with the civil law.

5085. If you were appointed a Sudder Judge, and had the advantage of a complete index to the Regulations, do you think you should find any difficulty in doing your duty just as well as your brethren; should you not, in point of fact, have recourse to precisely the same means of performing it?

I should feel the want of previous training, if appointed to the Sudder.

5086. Not if you all only had recourse to the same index?

But the Sudder Judges have generally, with three or four exceptions, been selected from among those who have been Civil Judges. Perhaps in as many as five or six cases, men have been appointed to the Sudder Court from being Commissioners of Revenue, and who have previously had no opportunities of studying, and, therefore, no knowledge of the practice of the civil law; and this is considered by the Natives a very great defect in the system.

5087. Are not the ancient Regulations, and all those annotations and explanations of them, written generally in a language which is very deficient in precision?

They are very simple, certainly, in style, but deficient in precision; but the laws which have been enacted since we have had a Legislative Member of Council have been rather too much elaborated. They may be very precise; but certainly they are not half so intelligible to the Natives as the old laws.

5088. Is it not rather difficult now and then to make out what the law means, even with respect to the ancient Regulations?

There is a considerable degree of difficulty sometimes felt, but not more than applies to almost all laws.

5089. The same words are not used to express the same things throughout?

Not throughout the Regulations; that is to say, not in those enacted during the last 16 years.

5090. Lord *Wynford.*] Are there any treatises which facilitate the study of the law?

There are scarcely any treatises upon the law; none of any importance.

J. C. Marshman, Esq.

3d May 1853.

5091. Earl of *Ellenborough*.] Would it not be very desirable that all that voluminous code should be consolidated?

It is one of the most desirable objects that can be thought of; and it was expected, when the Law Commission was appointed at a very heavy expense, that they would succeed in consolidating and codifying the whole of our laws, so as to bring them within a narrow compass.

5092. *Chairman*.] What are the principal defects of the present code, extended as it is to fill 18 folio volumes?

It is too voluminous; and the system of law administered under that code is a great deal too technical; so that you may almost say that justice is smothered in the folds of law.

5093. Is there any more simple mode of procedure now in operation in any part of India which could be adopted with advantage in the general civil code?

In some of the Non-regulation Provinces to which the code does not apply, they have a far simpler mode of civil administration, and a simpler code of civil procedure, more especially in the Punjaub, where Lord Dalhousie directed the Board of Administration to draw up a short and simple code of civil procedure. It is comprised in about 15 foolscap pages, and it has been found to work exceedingly well.

5094. Earl of *Ellenborough*.] By whom was that code framed which is now in force in the Punjaub?

I think it was chiefly drawn up by Mr. Montgomery.

5095. Was it not framed in the interval between the departure of Sir Henry Lawrence and the arrival of Sir Frederick Currie, in about four or five weeks?

No; I do not know exactly the period in which it was drawn up; I believe it was written by Mr. Montgomery, who was a member of the Board, having previously been senior Commissioner; and that it was afterwards elaborated and corrected by Mr. John Lawrence. But I believe they have been two or three years in bringing it to its present state of maturity.

5096. *Chairman*.] Is there a Small Cause Court in Calcutta?

Yes; we had a Court of Requests in Calcutta; I believe it was a continuation of the old Mayor's Court of Calcutta, which remained after the Supreme Court was established. This Court of Requests was abolished about four or five years ago, and a Court of Small Causes established in its stead, the procedure of which is exceedingly simple. The plaintiff and the defendant are confronted with each other; and the cases are decided in a tenth of the time that would be required in the Supreme Court, and at a very small expense indeed. This Court has three Judges, one of whom is a Native and a very able man; and its decisions have generally given great satisfaction in Calcutta, and are put in contrast with the decisions in the Supreme Court, which are exceedingly expensive. The Chief Judge of the Supreme Court in Calcutta was said at first to be rather opposed to the establishment of this brief and simple mode of procedure, because he was apprehensive that the ends of justice would not be promoted thereby. But it is well-known in Calcutta, that in the interval between the death of one Chief Judge and the appointment of another, he was so kind as to say that he would himself preside in that Court. He had thus an opportunity of ascertaining how far its mode of procedure in that Court were conducive to the ends of justice; and he is said to have acknowledged that he had been altogether mistaken, and that he considered the Court an admirable device for disposing of all cases brought in it. It is so popular in Calcutta, that both Natives and Europeans are anxious that the Government should extend the jurisdiction from 500 rupees, or 50 *l.*, up to 1,000 rupees, or 100 *l.*

5097. You mentioned that one of the Judges in that Court, a Native, is a very distinguished man; what is your opinion of the Native Judges generally?

With respect to the Judges who have been appointed to the office of Principal Sudder Amin, Sudder Amin and Moonsiff, their character I think has gradually improved: the two superior offices were created by Lord William Bentinck about 20 years ago. At first there was no supply of able men for those offices; but the Government have been exceedingly anxious to attract the confidence of

the

J. C. Marshman, Esq.

3d May 1853.

the people to this mode of administering justice by their own countrymen, and have therefore prescribed a very stringent examination for all those who are candidates for the office of Moonsiff, which is the lower grade; and no man is now appointed to the superior grades, except in consequence of his having shown great ability and integrity in the inferior office. I think, generally speaking, that the Natives themselves are pleased with the innovation. I may say that the Judges themselves are very acute; their national character leads them to take great delight in legal and metaphysical disquisition; and many of the decisions of the Native Judges that I have seen are drawn up with as much ability as any of the decisions of the covenanted Civil Judges, either in the District Courts or the Sudder Court. The Natives are exceedingly proud of being appointed to the office, and are very anxious to show that they are qualified for it by giving particular attention to the compilation of their decisions; I think, therefore, it may generally be said, with some exceptions, that the experiment that was then made has completely succeeded.

5098. What is your opinion with respect to their venality?

It is very difficult to speak with any degree of certainty upon such a subject, because I have only been brought personally into contact with a small number of the Native Judges; but I think that the Natives themselves consider them in a great measure free from the charge of venality.

5099. Do you think that their emoluments are as high as they ought to be?

By no means. The Moonsiff is, in fact, the Judge of the common people; he receives and decides all cases under 30*l.* The aggregate number of cases decided by Moonsiffs in the course of the year exceeds 100,000, and the office is therefore one of very great importance in the community, but he receives no higher pay than 100 rupees a month, or 120*l.* a year, to begin with; and he can rise no higher than 150 rupees or 180*l.* a year in that grade. The second grade is that of Sudder Amin, who has 250 rupees a month for his personal allowance, or 300*l.* a year. The Principal Sudder Amin has 400 rupees a month, or 480*l.* at first, and eventually 600 rupees a month, or 720*l.* a year; but when you consider that the Principal Sudder Amin has the primary decision of all cases above the value of 500*l.*, and that the aggregate value of the suits in those Courts amounts annually to many millions sterling, it appears evident that they are underpaid at 600 rupees a month: they decide suits which formerly were decided by European Judges who had 4,000*l.* sterling a year; that is, the Judges of the Court of Appeal and Circuit.

5100. Earl of *Harrowby.*] What is the position of the Native as to his expenditure; is a Native considered a wealthy man, with 600 rupees a month?

It is a very good allowance for a Native; but when you consider that this Native stands at the head of the official Native society throughout the district, which contains perhaps a million of people, and that he is surrounded by large landholders, some of them with 5,000*l.*, some 8,000*l.*, and some 10,000*l.* sterling a year, it does not appear that he is sufficiently remunerated to maintain the dignity of his position upon 600 rupees a month.

5101. Lord *Monteagle* of Brandon.] After about how many years' service would a Native in the ordinary course of promotion, and assuming average desert, reach this higher office of Principal Sudder Amin?

I think, scarcely under 15 years' service.

5102. Earl of *Harrowby.*] Having entered at 25?

Having entered at 25, he would reach it at the age of 40.

5103. Lord *Monteagle* of Brandon.] Is not the number of Principal Sudder Amins who receive this salary of 600 rupees a month very limited?

I think it is about one-fourth the whole number.

5104. Earl of *Harrowby.*] Do you know whether persons of consideration in the country are devoting themselves to that career?

I think it is very much coveted, and begins to be much more desired than ever. There was a singular instance the other day of one of the grandsons of Tippoo Sultan applying to the Government for the office of Moonsiff.

5105. Lord

J. C. Marshman, Esq.

3d May 1853.

5105. Lord *Monteagle* of Brandon.] Do you consider that the extended education that is now given within the Presidencies to the Natives has a tendency to form a class of persons from whom those Native Judicial Officers can be taken?

I think to a very great extent. When those offices were first established, the great majority of Judicial Officers were Mahomedans; but latterly, the Hindoos have been gradually encroaching upon their number. At the present time, the number of Hindoos almost exceeds the Mahomedans. Now the Mahomedans can scarcely be brought to study our language or our literature; whereas the Hindoos are particularly partial to it. A very large proportion of those now appointed to the office of Moonsiff consists of men who have taken a high degree at the public institutions.

5106. Are you of opinion that the course of study at the great Native Colleges, such as the Hindoo and Mussulman Colleges at Calcutta, might be improved in respect to legal education, so as to afford better qualification for the Judicial Office?

I think you might, with great advantage, appoint a Professor of Law, both in the Hindoo College and in the Mahomedan Madrissa. In the Mahomedan College the study of the Mahomedan Law is the chief object of pursuit.

5107. That being identical with the Koran?

Yes; in fact, the Koran. In some of our institutions I think they might have a Law Professor appointed with great advantage, who should give lectures, and almost codify our laws, for when he comes to give lectures he will necessarily form them into a kind of code.

5108. Do you think that such a change would not only tend to raise the character of the candidates for the judicial offices, from the Moonsiff upwards, but that it might have a tendency also to improve the general position of the subordinate officers of the Court and the Vakeels, and ultimately to create something like a Bar in the Native Courts?

I think the great difficulty lies: the subordinate officers of the Court are not well paid. Civil Judges have a great objection to taking men fresh from the Hindoo College and placing them in their Courts. They say that they themselves are responsible for the good working of those Courts, and that the young men who come from the Colleges may be very good mathematicians, and be able to appreciate Bacon and Milton and Johnson, but that they make very indifferent officers of the Court. For officers in those Courts you require men who are thoroughly trained to business, and who have had long professional experience. The Judges have therefore very considerable objection to receiving men directly from the Hindoo College or from any other public institutions; they do not consider that the course of study pursued at those institutions fits men for undertaking those offices. They prefer that men should enter the Courts at a small salary, say, eight or ten rupees a month as mere writers, and gradually rise up to the chief situations, in proportion as they gain experience.

5109. I collected from a previous answer, that you believe that there is general confidence felt in the integrity of the Native Judges in administering justice in those Courts; does the same confidence extend to the subordinate officers of those Courts whose position and mode of appointment you have just described?

I am sorry to say that there is no confidence whatever in them.

5110. Then, the system of rejecting those who are considered to be over-educated, and of selecting persons of a subordinate class, and appointing them at very small salaries, with the prospect of rising, has not attained the main object of obtaining officers who possess the public confidence in point of integrity?

No, it has not.

5111. Viewing the administration of the judicial system in India, above all, in respect to written evidence and written depositions, does not a great deal depend upon the character of the officers of the Court?

A great deal. In fact, when a Native goes to institute a suit in Court, he considers it his first business to study the character of the Native officers; he believes that the decision of the suit depends infinitely more upon them than

upon

J. C. Marshm
Esq.

3d May 185

upon the merits of the case, or even upon the ability of the Judge, and his first business is to conciliate those officers by bribery and corruption, or as a Native would say, "I went down to the Court and I found the head officer very stiff, and his mouth very crooked, and I made it straight."

5112. Earl of *Harrowby.*] What influence are those subordinate officers supposed to have in the decision of the causes?

They make it their study to obtain an extensive influence. It is scarcely possible to define the various ways by which they can contrive to influence the decision of a suit, by keeping back witnesses, or not bringing them forward, or by making their own representations of the evidence at a particular time, and also by various suggestions made with so much ability and so much suppleness, that the Judge finds himself drawn into their opinion almost before he is aware of it. It is very difficult to define exactly the extent of their influence; I can only say that it is boundless in the Courts.

5113. It is not only supposed to exist, but it really does exist?

It does really exist; the great difficulty of an honest Civil Judge is to free himself as much as possible from their influence.

5114. *Chairman.*] Do you see any easy way of correcting such an abuse as that?

No; we have never been able to discover it. If you dismiss one venal officer, a man of great ability, and in whom you have confidence, you get another man who is just as corrupt, and has not half the aptitude for business.

5115. Lord *Monteagle* of Brandon.] Supposing there were education given in the public institutions having more of a legal character, and designed for legal purposes, do you not think that by means of the educational system you might obtain men, who, though they might be less highly gifted in general literature, such as those branches to which you have adverted, would know something more about the Courts of Law, and would be likely, if adequately paid, to turn out useful officers in the Courts of Justice?

I think they would; but it is absolutely necessary that a man should have a training in the practice of the Court; he must therefore begin upon a low salary. A man who has obtained a thorough knowledge of English, and who, perhaps, has gained a senior scholarship of 40 rupees a month, cannot be expected to go into Court upon an inferior allowance of 10 rupees a month.

5116. Do you think that a better legal education would improve the position and character of the class of Vakeels in those Courts, independently of the officers?

I think it would. The Government have determined to use every effort to raise the character of the Vakeels; they have recently ordained, that no one shall be allowed to practise as a Vakeel who has not passed a rather stringent examination. This examination is not quite so stringent nor so extensive as that which is ordained for the Moonsiffs, but still it is a great improvement upon the previous system.

5117. You are aware that, according to our English practice, no person can be admitted as an Attorney or Solicitor except one who has served an apprenticeship to persons in that walk of life. Supposing the class and character of the Vakeels to be improved by a better system of education, having more of a professional character than that which they now enjoy at the institutions; would it be possible, by means of some link like that of apprenticeship, to obtain as officers in the Courts of Justice educated young men who have served as apprentices to Vakeels or as clerks in the offices of Vakeels, and who have in that way acquired some professional experience in a subordinate capacity?

The difficulty would lie, that the Vakeel receives from his practice more in fees than he could obtain from a situation in Court.

5118. The suggestion is not that the Vakeel should be transferred into an officer, but that the clerk or the apprentice to the Vakeel might furnish you with the elements from whence you could appoint officers to the Courts; would it not be a good training for them for that purpose?

It might be a great advantage to them; and the attention of the Government will no doubt be increasingly directed to the improvement of the character of the

the officers of the Courts. As soon as we have a good system of vernacular education at work in India, and the Government is enabled to appoint an inspector of vernacular schools, and to institute a strict examination, they would then be enabled to say, that no man should be appointed to any office of Government of the value, say, of ten rupees a month who has not passed a creditable examination, and obtained a certificate of qualification.

5119. That would be, in fact, applying in the subordinate offices the principle of that memorable minute of Lord Hardinge with respect to the higher offices?

Precisely so; that is just what is required in India; a good system of vernacular education for those who have not leisure and opportunity for acquiring a knowledge of English.

5120. Earl of *Harrowby*.] Do those Hindoos who have been educated in the Colleges get very much free from their old superstitions?

In a great many instances they do; I may almost say in the great majority of instances, although some of those who are acquainted with English, and well versed in English literature, still cling to the old system of idolatry; for instance, the individual who drew up the petition that has been sent to Parliament regarding the Lex Loci is understood to be a native so well acquainted with English that he is considered almost the very first poet among them. Though some of the educated Natives, therefore, still continue very much wedded to their ancestral creed, the general influence of the education that is given to them, even by the Government, although the study of the Bible is excluded, is calculated to shake the hold of their ancient superstition upon their minds.

5121. Do you find that their moral character and integrity is affected one way or another by that change?

That is rather a difficult question to answer; I do not think the Natives themselves have any greater confidence in the integrity of their own countrymen who have been thus educated than in those who have not.

5122. Lord *Colchester*.] Do those who have thrown off the superstitions of the Hindoo faith apply themselves to any other system of religion?

I think the greater number of the Natives in Calcutta who are called "Young Bengal" are altogether alienated from the superstitions of their own country, without having any tendency whatever to embrace Christianity; on the contrary, some of the greatest opponents of Christianity are to be found among the educated classes, that is, among those who have received education at the Government Colleges.

5123. Earl of *Harrowby*.] Are they distinguished for a higher feeling of honour or respect for English opinion than the Natives of the old sort?

I think they have a higher respect for English opinion; but the infusion of a principle of high honour into a nation is a very slow process indeed.

5124. Lord *Monteagle* of Brandon.] Do not you think that the intellectual development which you have described has at least removed one obstacle which stood in the way of the growth of moral principle?

Yes; and I think it is exceedingly advantageous to bring them into connexion with Europeans who are men of high principle. The influence of such men must have a natural tendency to raise the national character.

5125. And in like manner, if they obtain a familiarity with, and a great desire for, and pleasure in English literature, must not the natural tendency and effect of their cultivating our literature be to improve, or, at least, to open the door for the improvement of their moral character?

I think the door has been opened; but it will require a great many years for you to overcome the deficiencies of the national character.

5126. *Chairman*.] Several witnesses who have appeared before the Committee have expressed their disapprobation of the effect of appeals being carried up from experienced Native Judges to less experienced Session Judges, who are Europeans; do you concur in that opinion?

There is certainly a great disadvantage in the way in which the Civil and Session Judge is, under the present system, appointed to his office. He is called upon to decide appeals from men who are far better acquainted with the law

J. C. Marshman, Esq.

3d May 1853.

and the practice of the Courts than he is; and this must, to a considerable extent, impair the confidence of the public in his decisions. As he gradually becomes acquainted with the law, and familiar with the procedure of the Courts, the confidence of the Natives in him gradually improves. I have seen several instances of men who have gone into the Court without any knowledge of the law, and, in the course of four or five years, have become very eminent for their decisions; have given considerable satisfaction to the Natives of the district. But what we have to regret in Bengal more especially, and throughout the Gangetic Provinces, has been the abolition of the office of Registrar or Assistant Judge by Lord William Bentinck; and it is the general wish of all classes, both Europeans and Natives, that the Government would re-establish this office; so that the Civil Judges should be chosen from among those who were most eminent as Registrars.

5127. Lord *Broughton*.] What were the peculiar duties of the Registrar?

The duty of the Registrar was to hear appeals in cases of a limited amount; to prepare all the cases for the Judge, and to assist him in superintending the general administration of Civil Justice throughout the district.

5128. Is his place or his duty supplied by any corresponding officer now, or by a division of those duties amongst others?

There is no officer appointed, either European or Native, to supply his place; and the Civil and Sessional Judge, when he is first appointed to the office, is obliged to depend, in a great measure, upon his Sherishtadar, that is the head Native officer, who is almost universally corrupt.

5129. Lord *Wynford*.] What do you mean by "preparing the cases for the Judge;" is it making an abstract of the evidence already given, and so placing it in a convenient form before the Judge?

There is an immense number of suits that come up continually before the Judge; and there is a vast deal of judicial business, all of which passes through the hands of the Sherishtadar, and he has an opportunity thus of serving his own ends by withholding or by presenting papers, or by giving a distorted view of the evidence that has been taken, and thus influencing the mind of the Judge; whereas, if we had a Registrar of the Court who should occupy that position, and through whom every case should pass which came up before the Judge, he would thus become acquainted with the whole machinery of the Civil Courts, and by himself hearing appeals to a certain amount would become familiar with the law and the procedure of the Court, and be prepared to take the chief place in it hereafter as Judge.

5130. You think that such a system, besides its good effect in educating the young man for his subsequent offices, would also prevent a great deal of corruption amongst the Native officers?

A great deal; because when he himself came to the office of Civil Judge, he would be perfectly acquainted with the working of the Court, and the system that he had to administer.

5131. He could prevent, under those circumstances, evidence and documents being withdrawn from the observation of the Judge, as the Native officer at the present moment is in the habit of doing?

He would have an opportunity of doing so, and of thus subserving the cause of justice.

5132. Lord *Monteagle* of Brandon.] Would a young civilian, coming over from England and taking a Registrar's appointment for the first time, be fully competent, from the average acquaintance with the language which such persons possess, to exercise a just and efficient supervision over the documentary evidence in the Native languages which he would be officially bound to lay before the Judge?

Quite so. The examination which he must have undergone after he had been three or four years in the service would provide for his being thoroughly acquainted with the language of the country; he would be enabled to read any document, however difficult the handwriting, and to understand it.

5133. That is assuming, not, as was the former practice, that a young man upon his first going to India should be made a Registrar, but that he should have

J. C. Marshman, Esq.

3d May 1853.

have some years' experience of an inferior kind antecedently to it, which would enable him to become conversant with the Natives and their language?

Exactly It is indispensably necessary that the Civil and Session Judge should have a considerable knowledge of criminal law, and of the working of the police; and that he should be well acquainted with the law of tenures, and with the rights and interests of the agricultural community. If a young civilian were to continue for six, seven or eight years in the position which he now occupies of Assistant to a Magistrate and Collector, and afterwards of Joint Magistrate and Deputy Collector, and at the end of eight or nine years were called to make his election between remaining in the fiscal line or going off to the judicial line, he would during those eight or nine years have acquired a sufficient knowledge of the criminal and revenue laws, and be thoroughly master of the language, habits and manners of the people.

5134. But when he had made his election, and determined in favour of the law and judicial functions as the profession which he undertook, you would not recommend that he should afterwards, for the purposes of promotion or convenience, be removed from the profession which he had chosen, either to political life or to the revenue line?

No; at present he is obliged, for the purposes of promotion, to accept the office of Magistrate; from thence he goes off to the Collectorate, and from thence again to the Civil line; from the Civil line back again to the Collectorate, as a Revenue Commissioner, and finally to the Sudder Court. The plan which has been proposed for Bengal, and which I think is in operation at Bombay, is that as soon as a young man, after eight or nine years' service, has chosen the Collectorate line, he is to remain in it, and to take his promotion entirely through it. In Bombay the Collector and Magistrate receive the same pay as the Civil and Sessions Judge; but in the Bengal Provinces the difference of pay is more than 600 rupees a month, or between 700*l.* and 800*l.* a year. The proposition which has been made in India, and which seems to represent the general wish of the community, is that the Collector should receive the same salary as the Judge; and that those who have entered the Collectorate line should obtain their promotion as Revenue Commissioners, and finally go into the Board; while those who become Civil and Sessions Judges should obtain their final promotion in the Sudder Court.

5135. Earl of *Ellenborough.*] Is there not a practical convenience at Bombay, according to Indian notions, in having the salary of the Judge and of the Collector of Customs exactly the same; for if the Judge happens to be removed for unfitness as a Judge, he gets an office of exactly the same value as Collector?

I have not been at Bombay, and, therefore, I cannot exactly state how the case stands.

5136. That would be, according to Indian notions, a convenience, would it not?

If the individual was not allowed to jump from the Collectorate line to the other, or from the Civil line to the Collectorate, that objection would be removed.

5137. If a man was considered unfit to be a Judge, would you make him Postmaster-general, for instance?

That must depend upon the new arrangements which the Government of India are now making regarding the post-office.

5138. Lord *Monteagle* of Brandon.] We have spoken about the effect of giving a more legal direction to the education of persons intended for Judicial functions in India; have you turned your attention to the effect that might be produced in that way upon the creation of a Bar in India, supposing Mr. Cameron's recommendation for establishing something of a University education in India to be realised?

I have not had an opportunity of reading Mr. Cameron's pamphlet upon the subject; our ideas with regard to a University do not perhaps exactly agree with those of Mr. Cameron; our idea of a University was, not that it should undertake the education of any particular class, but that the University in Calcutta and at other Presidencies should be placed upon the same footing as the

University

University of London, and grant degrees to the students of all Colleges that were affiliated with it.

J. C. Marshman,

3d May 1853.

5139. Supposing such a system to be carried into effect, and to comprehend within its curriculum of examination the attainments which had been made by students in law as well as in literature and in matters of science; do you think the tendency of such a system would be to raise up a class of Natives or of Indo-British, that would form actual practitioners, like our Barristers in Courts of Law?

It is quite possible; as the Government gradually matures its plan of establishing a more severe examination for the Vakeels before they are allowed to practise, I think this will have a natural tendency to raise their qualifications; and they will be enabled to obtain those qualifications, either at any of the private colleges and schools, or at any of the public institutions; but it must depend, in a great measure, upon the mode in which the Government carry out their plan of not allowing any one to practise as a Vakeel, unless he is able to come up to their standard of qualification.

5140. Earl of *Ellenborough*.] Are you at all acquainted with the institutions existing in the Native States for teaching the higher branches of knowledge?

Not much.

5141. Are you at all acquainted with the institution established by the Nabob of Tonk?

No; I can only speak of it from what I have heard upon the subject.

5142. Are you aware that he has made his tutor his minister?

I have heard of it.

5143. Are you aware that he is a very great encourager of learning?

Yes.

5144. Has it ever occurred to you, that it would be advantageous to us to endeavour to encourage the learning of Mahomedans, for instance, and to attract to some place in India the most learned professors of the Mahomedan faith from different parts of the world?

I have never contemplated such an institution, and I am therefore unable to speak with any degree of definiteness as to the effect that it might produce.

5145. Are you aware that Bokhara was formerly the place where there were great institutions for learned men?

Yes; but that was in a Mahomedan State.

5146. And that has now ceased to be so?

Yes.

5147. And, in fact, the Mahomedans have not now, anywhere in the world, any great institutions for their learning?

No; but it is not a part of the present policy of our Government to give encouragement to Mahomedan learning, but rather to induce Mahomedans to apply themselves to European literature.

5148. Lord *Broughton*.] Did you ever consider the effect of Lord Cornwallis's regulation in 1793, by which the administration of the police of the country was taken entirely out of the hands of the zemindars and put into the hands of the Government?

Yes; I have looked very closely into the subject; I think the whole question requires a much greater degree of examination than it has yet received. Lord Cornwallis's plan was to take the administration entirely out of the hands of the natives. When we took possession of the country, we were anxious to leave things very much in the state in which we found them; we found the charge of the police, for instance, in the lower parts of Bengal in the hands of a man who was called the Fouzdar of Hooghly; this man was in the receipt of 6,000 rupees a month, 7,200 *l.* a year, from our Government, at a time when the members of Council received only 300 *l.* a year. Lord Cornwallis's principle was to take the administration entirely out of the hands of the Natives, and to concentrate it in those of European agents, and almost exclusively in the civil servants; he therefore withdrew the administration of civil justice from the Moonsiffs, and left them the cognizance of suits of the value of only 6 *l.* 8 *s.*; at the same time he deprived the zemindars

J. C. Marshman, Esq.

2d May 1853.

zemindars of the control of the police. The zemindars, from time immemorial, had had charge of the police, and were responsible for its operations; they maintained regular police establishments, and in many instances had assignments of land for the purpose of maintaining those establishments; Lord Cornwallis relieved them at once of all police jurisdiction and responsibility, and he directed that they should discharge the whole of their police establishments. The police of the country was therefore from that time placed under the superintendence of European officers; but though the zemindars, who were large landowners, were thus deprived of all official authority, they still continued to maintain a most important position in the country; they have a complete control over their own tenantry; every zemindar in the country holds what is called his own cutchery or court as regularly as the courts of justice are held, where his tenantry come up to pay him their rents; and where he inflicts fines and penalties upon them for the non-payment of rents, and in some cases practises every kind of extortion; but such is his influence throughout the whole of his estate, that you rarely find any man amongst the tenantry who has courage to go to the courts and complain against him. It transpired only about a twelvemonth before I left India, that a zemindar, a very wealthy man, within six miles of Calcutta, was in the habit of exacting a fee of three rupees upon every marriage that was solemnized throughout his estates; this demand was of course perfectly illegal, and any man might have gone into the courts and lodged a plaint against him; but such was his influence that no man would venture to do it. At the same time this court of the zemindar, in which he settles all his own business with his own ryots, is employed by the ryots themselves for the settlement of their own disputes with one another; nine-tenths of the little quarrels that arise in an agricultural community are settled quietly in those courts, which are a kind of baron's court, either by the zemindar himself or by his servants; the zemindar therefore has a degree of influence throughout the country which it is scarcely possible for any one to appreciate here, at the present time; it rather resembles the influence which the barons exercised three centuries ago in this country; but the zemindars having been deprived of all official authority, and all connexion with the police, not only give no assistance whatever to the police, but are in many instances opposed to its officers; on this ground it has been thought that we might possibly be able to revert to the old and long-established system in India of legalizing this power and influence which the zemindar now exercises, and placing it under suitable restrictions.

5149. Then you think that, upon the whole, Lord Cornwallis's regulation of 1793 has not been attended with the success which he contemplated, and which many admirers of Lord Cornwallis's administration attribute to it?

The system of employing none but Europeans has entirely broken down; the Government found that it was utterly impossible for 400 or 500 isolated Europeans to manage all the affairs of 30,000,000 of people, and that in fact the business of the country was managed by the natives themselves, irregularly; and acting under no responsibility. Lord William Bentinck acted upon this principle; he said, "In the civil courts the influence of natives is paramount, it is impossible for us to counteract it; therefore the best plan will be to legalize it, and put it under restrictions;" and the cognizance of suits of large amount was entrusted to natives; and it has been considered whether we might not be able to give police powers to the zemindars, and to place them under such restrictions as to prevent the abuse of that power. The great difficulty we have in India is, if we concede power to the natives, to prevent the abuse of it. When it is considered that the whole of the territorial influence of Bengal and Bahar is totally separated from our police, and that we have a body of 160,000 or 180,000 village chokedars, a kind of rural police, who do not act under the orders of the Magistrates, and are not appointed by them, and who have immense influence in the country, being ramified throughout every district, and established in every village, and who seldom receive more than 3 *s.* a month, and are therefore constantly in league with public depredators; and that among the people themselves there is no moral or physical courage, the extreme difficulty of having a good police in Bengal will be at once seen.

5150. *Chairman.*] Is there not another point of resemblance between the zemindars and the old barons, that they have private wars among themselves?

Yes; those wars are carried on to a very extraordinary extent. When two zemindars

J. C. Marshman, Esq.

3d May 1853.

zemindars are at feud with each other, instead of resorting to the courts, they collect 200 or 300 armed men together to fight their battles out; and this is done under the very eye of the Government. About four years ago, soon after Lord Dalhousie arrived in the country, he was perfectly astonished to hear that one evening a number of those armed men embarked in half a dozen boats in Calcutta, under the direction of one of the powerful zemindars, and went six or eight miles up the river, and that there a thousand of those men on both sides met together and regularly fought out the zemindars' quarrel; one or two men, I believe, were killed, and three or four wounded. But those encounters are so common that they pass almost without notice.

5151. Have the Government made any efforts to put them down?

The Government has been rather more supine than it ought to have been; but the great want of Bengal is a separate Government.

5152. Lord *Somerhill.*] Was any thing done in that case?

Lord Dalhousie took a deep interest in it, and informed the Magistrate that he would support him in the most searching investigation. The case made a great noise in the country, because one of the parties who was charged with having instigated the fight was a most influential native in Calcutta. The Magistrate was a young man, Mr. Young, not more than four or five and twenty years of age, and he was acting with the dread of the Supreme Court continually before him. One of the parties who had employed these men offered, to my knowledge, a reward of 5,000 rupees to any native who could discover any mode by which this Magistrate could be thrown into the Supreme Court, or, as they call it, "grand juried;" and, in this case, if this Magistrate had signed any paper with the letters "J. P.," or Justice of the Peace, he would have rendered himself amenable for the whole of his proceedings to the Supreme Court in Calcutta.

5153. Was he resident in Calcutta?

No, he was resident in the Mofussil. He investigated the case most closely, and he did that which had not been done for a long period; he committed this wealthy native to prison, and he remained for three days in the gaol at Serampore, during which time he said that he neither ate nor drank. There was an appeal made to the Civil and Sessions Judge at Hooghley, and he was let out upon bail. The case was finally tried by one of the Sessions Judges appointed by the Government, and the parties were acquitted: it was well known, of course, that they would be acquitted, because there was a most unscrupulous employment of bribery and corruption with regard to witnesses; but it cost them 5,000 *l.* sterling in the employment of European barristers and solicitors before the Civil Court, and in getting up the necessary evidence; but the dread of having 5,000 *l.* to pay has operated in a most salutary way, for it has kept that portion of the district from those affrays ever since.

5154. *Lord Privy Seal.*] Were the hostile zemindars present to lead their respective followers?

No, they are themselves the greatest cowards in the country.

5155. Lord *Elphinstone.*] Is not the occurrence of those affrays in the neighbourhood of Calcutta one of the consequences of the divided jurisdiction of the Supreme Court and the Criminal Court?

I cannot say that that is exactly the cause of it.

5156. Are not these affrays wholly unknown in other parts of India?

They are confined to Bengal.

5157. Earl of *Ellenborough.*] Do not the indigo planters hire people who have a fight sometimes?

I think that practice has been rather going out of late.

5158. Does it not generally arise out of the native selling his crop to two or three different people?

The native will go and sell his crop to three indigo planters one after the other, and there is often a fight as to who is to obtain possession of it.

5159. You think that the police are not of sufficient strength to prevent such a fight?

No, the police is not strong enough.

J. C. Marshman, Esq.

3d May 1853.

5160. What would you think of having a police of a somewhat military character, that would put down such affrays on the part both of zemindars and of indigo planters?

The difficulty would be, that any police of that kind must be composed of natives of the Upper Provinces, of whom the natives of Bengal entertain the greatest possible dread; and they would be, perhaps, greater oppressors than any we have yet seen.

5161. Are not many of the Calcutta Militia from the Upper Provinces?

I think they are; but I will not be certain that there are not a number of natives of Bengal in it.

5162. Have you ever found any inconvenience arise from the circumstance of there being a number of Hindoostanees in the Calcutta Militia?

Not many years ago there was a great battle between the soldiers of the Calcutta Militia and the natives of a village on the banks of the canal, near their lines; and it was found necessary, I think, to call out the European troops to quell it.

5163. Lord *Elphinstone.*] Are the Calcutta Militia employed upon police duties?

I believe they are employed almost entirely as guards; but this was an affray between them and the natives of a village close to their lines, and they turned out at once, and there was a considerable loss of life.

5164. Earl of *Ellenborough.*] Would not military discipline give the same advantage to the Bengalee converted into a military policeman over other Bengalees as it does to the Hindoostanee over other Hindoostanees, and make them capable of enforcing obedience to the law?

I am afraid there is such an inveterate degree of pusillanimity among the natives of Bengal, that no military discipline would infuse courage into their minds.

5165. Lord *Elphinstone.*] Were not the provincial battalions formerly existing in Bengal composed of Bengalees?

I think they were.

5166. Lord *Somerhill.*] You said just now, that the Magistrate, in the case to which you referred, had before him the dread of the Supreme Court; do you mean by that, that the authorities of that Court would be hostile to him, or that the state of the law was such that he would have a dread of that Court in the same way as any man in this country may be said to have a dread of the Court of Chancery?

Not exactly in the same manner that any man would have a dread of the Court of Chancery, though perhaps, in some measure, partaking of it: it is the expenses that he would dread. I can illustrate it by a particular case which occurred at Serampore. The British Government passed an Act ordaining that whenever two-thirds of the inhabitants of a town manifested a wish for a municipal institution, they should obtain it. The inhabitants of Serampore did, generally, at the time I speak of, manifest a desire to obtain a municipality for the improvement of the town; and a petition was sent up to the Government, signed by 600 or 700 of them. The Magistrate stated, when he was transmitting it, that he was certain that the majority of the inhabitants of the town were in favour of this system of municipal government; and the Government immediately appointed a municipal body; but when the richer natives found that it was proposed to levy a tax of 5 per cent. upon the rents of houses, they determined, having possession of all the good houses themselves, that they would not pay this tax. The municipality, who had to collect it, applied, according to the Act, to the Magistrate: the Magistrate distrained the property of five or six of those natives who had refused to pay the tax; upon which they brought an action against him in the Supreme Court, and the Judges of that Court decided that the majority of the inhabitants had not exhibited any wish for the municipality, and that therefore the distraint was illegal. The Magistrate was fined 50 rupees, and the costs amounted to 5,000 rupees, which, however, were paid by the Government.

5167. So that what the Magistrate apprehended was, that the zemindar would institute a suit against him in the Supreme Court for vexatious proceedings, or for false imprisonment?

Yes.

Yes. The natives too frequently consider the Supreme Court as a kind of antagonist to the Government; and whenever they can gain such a case in the Supreme Court, it is considered a triumph over the Executive Government.

5168. Lord *Broughton*.] You have attributed part of this mischief to the want of a separate Government for Bengal; you mean that there ought to be a Government of Bengal, distinct from the Government of India?

Exactly so.

5169. Is that opinion shared by men who have had great and high official experience?

I think that opinion is universal in Bengal, both among the Europeans and the natives, and among the official and non-official community: it is considered universally to be the one great desideratum for the Lower Provinces that we should have a separate Governor, upon the same model as the Governor of the North-West Provinces. It is utterly impossible for a Governor-general, when he is in Calcutta, to be able to attend to the general concerns of the empire, and at the same time to regulate the administration of Bengal.

5170. You mean that there should be a separate Governor for Bengal, not assisted by a Council?

Not assisted by a Council; and that the Governor should be altogether independent of Council, that is, that it should not be necessary for him to be a member of Council. At present, when the Governor-general is absent, he appoints some one to be Deputy Governor of Bengal, but he must be a member of Council; and the senior member is generally appointed, because it would be considered a slur upon him if he were passed over. You have, therefore, a constant succession of Governors: we have had 11 changes, I think, in the course of 18 years; I mean Governors and Deputy Governors. The individual who happens at the time to be the senior member of Council may very often, as in the case of Sir John Littler, be a very eminent military officer, but altogether unacquainted with civil questions, and quite disqualified, from that circumstance, to be the Governor of Bengal.

5171. Are you not aware of any embarrassment that would arise from such an entire separation of the Governorship of Bengal from that of India; do you know of any objection to it?

The objection which I heard in India was, that as it would be necessary to give a large portion of the patronage to the Governor of Bengal, it might impair the dignity and authority of the Governor-general; but, on the other hand, it was considered (for the question has been continually a subject of debate in Bengal) that, as the Governor-general now has nothing whatever to do with the patronage of Madras or of Bombay, or even with that of the North-Western Provinces, except as regards the appointments of the Judges of the Sudder Court and Board (amounting to five or six appointments), the mere taking away from him the patronage of one-fourth of the civil appointments in India could not be considered as impairing his dignity. The Governor-general would still have either the direct appointment, or a veto upon the appointment, of the superior officers of Government in Calcutta; that is to say, the Governor-general would have the appointment of the five Judges of the Sudder, the three members of the Board, and the three Secretaries to the Government: that is, eleven appointments, each of which is of the value of 5,200 *l.* a year.

5172. Earl of *Ellenborough*.] By the Secretaries to Government, you mean the Secretaries to the Governor of Bengal?

The Secretaries to the Government of India; and it has been thought that he should have a direct veto upon the appointment of the Secretary to the Government of Bengal.

5173. In point of fact, is it not the case, that by arrangements made between the Governor-general when he leaves Calcutta, and the Deputy Governor of Bengal, no appointment is made to those superior offices without previous communication with the Governor-general?

I believe that, independently of any such arrangement, all those appointments are permanently considered as requiring the sanction of the Government of India; the Governor-general in Council, I believe, almost always makes a Minute upon the subject. In the absence of the Governor-general from Calcutta, it

J. C. Marshman, Esq.

3d May 1853.

would still be referred to him; and no appointments could be made to any of these higher offices without his direct sanction.

5174. Lord *Elphinstone.*] Have you never heard objections of a totally different nature, not at all involving the question of patronage, to the separation of the Governor-general from all immediate share in the administration of the country; would it not make him too much of an abstraction; and would not the same objections which apply now to the Legislative Member of Council being restricted to legislative questions only, and not taking any part in the general business of the Government, equally apply to a separation of the Governor-general from any direct and immediate share in the administration of any part of the country?

The Governor-general, at present, has no share whatever in the administration of the North-West Provinces, or of Madras or Bombay; he, therefore, interferes only in the local administration of one out of four Presidencies, and then only when he happens to be in Calcutta. The Governor-general has generally been absent from Calcutta three if not four years out of six.

5175. Still that occasional share which he takes in the Government of Bengal gives him some slight insight into the manner in which the business of the country is transacted, which he could not very easily acquire if he took no part at all in any of the details of the Government?

He would still have the entire control over all the proceedings in Bengal and the North-West Provinces, just as he has now. If you continue the present system of keeping Bengal under the Governor-general in Council, you merely give him the opportunity of taking charge of the local details two years out of the six, or one-third of his time; and whatever the advantages of this arrangement may be, the disadvantages completely outweigh them.

5176. It is a choice of difficulties; and the question is, whether it would not be better to give him a certain district to manage than to relieve him altogether from the whole revenue and judicial business of the country?

With regard to the revenue part of the business, the acquaintance he obtains with the revenue system in Bengal gives him no advantage in controlling the revenue system in the other Presidencies, where it is perfectly different.

5177. *Chairman.*] To return to the police system; what is your opinion of the security of life and property in Bengal?

The police in Bengal is in a very unsatisfactory state; there may have been some improvement of late; but 18 months ago there was not the slightest security for property, I will not say for life, in the districts immediately round Calcutta.

5178. Lord *Monteagle* of Brandon.] Within what reach hthe city of Calcutta?

Within a reach of 60 or 70 miles.

5179. Within what proximity to Calcutta?

Running up from Calcutta to 70 miles round it, particularly in five or six of what may be called the suburban districts; in them the insecurity of property was almost incredible. The country was overrun with bands of dacoits, under able, experienced and unscrupulous leaders, who lived entirely by plunder. I have heard the Magistrates of five or six of the districts round Calcutta affirm that, in their opinion, no man with property to the value of 20 *l.* or 30 *l.* could retire to rest at night with the certainty that he would not be plundered of it before the morning by those dacoits; such was the state of insecurity in which property around Calcutta was placed by these bands.

5180. Up to what period?

The insecurity became so great, and the popular clamour became so insupportable, that the Government at length appointed one Magistrate, one of the ablest men in the country, Mr. Wauchope, as Commissioner, expressly for the suppression of dacoitee; and his appointment led to very considerable improvement. As soon as it was found that the Government had taken the field in earnest, there was a degree of dismay thrown into the ranks of the whole of this dacoit community; and in some districts, where there had been two or three dacoitees in a night, they were free from those depredations for a whole month.

Mr.

J. C. Marshman, Esq.

3d May 1853.

Mr. Wauchope immediately set himself to work to ferret out these dacoits, and to obtain a knowledge of their plans and proceedings. He got some of them to turn approvers, and this gave him a clue to the proceedings of the gangs. Some of those who turned approvers confessed to having perpetrated no fewer than 40 dacoitees in the course of 12 years; and in scarcely any instance were they ever detected or taken up by the police, so skilfully was the whole system organized.

5181. Earl of *Ellenborough*.] Do they usually proceed by water to their object?

The districts immediately round Calcutta, to which they have access by water, are always more exposed than others.

5182. You find great difficulty in the way of the police putting them down?

Very great difficulty indeed; we have known instances of two or three boats going up in one tide from Calcutta, and plundering houses on the banks of the river, and going back again, without being detected.

5183. Have there ever been established upon the water armed boats manned by the police, for the purpose of pursuing them?

Every Magistrate has two or three such armed boats; but those dacoits contrive, in almost every instance, to evade them. I might mention that the Mahomedans had the same difficulty with regard to those dacoitees that our Government has experienced.

5184. The Mahomedan authorities were not embarrassed by the neighbourhood of a Supreme Court, were they?

The Mahomedans were in the habit of employing the most stringent measures for the eradication of those dacoitees. Warren Hastings, in 1772, in a Minute which he placed upon the records of the Council, stated that the preceding Government had been in the habit of directing that every man who was identified as having belonged to a gang of dacoits should be immediately executed, without any distinct evidence of his participation in any particular crime. He stated at that time, that unless we adopted something like the same rule, we should never be able to eradicate dacoitees. But soon after this Minute was written he was opposed in the Council by Mr. Francis, and other gentlemen that went out with him, and nothing was done; the consequence was, that dacoitees increased to such an extent, that in 1806 or 1807 the Government were obliged to appoint a separate Commission, consisting of Mr. Blacquire and Mr. Elliot, who proceeded into the district of Kishnaghur, and I think there were seven or eight hundred men seized. These stringent measures that were then adopted produced the happiest effect, and the district was, in a great measure, cleared of dacoits. But exactly in proportion to the supineness of the Government is the increase of this crime; and it has gradually gone on increasing, till the Government were obliged last year to appoint a separate Commission for the eradication of it. At the same time, it was determined to adopt the very suggestion that Warren Hastings had made 80 years before. In order to put down the associations of thugs, the Government had been under the necessity of passing a law, reviving, in fact, the old Mahomedan law against these organized disturbers of the public peace, and to ordain that any man who was convicted of having belonged to a gang of thugs should on that evidence be convicted as a thug, and sentenced to transportation. About nine years ago the thuggee officers in the North-Western Provinces requested the Government to pass a similar enactment for the eradication of the professional dacoits who belonged to certain tribes. An Act was accordingly passed, and about two years ago an effort was made to bring that Act to bear upon the suppression of dacoitees in the Lower Provinces. The Judges of the Sudder Court, however, were opposed to it, and affirmed that the Act referred only to dacoits who belonged to particular tribes; and that unless those men could be proved to have belonged to those tribes, they could not be convicted under that Act. But in the month of October last year, the question was argued before the whole Sudder Court, and the majority of the Judges determined that the Act was applicable to the suppression of dacoitee; in consequence of which, a great many dacoits were immediately brought before the Criminal Courts, convicted of having belonged to those gangs, and sentenced to transportation accordingly. I think that the appointment of an officer expressly for the suppression of dacoitee, in

J. C. Marshman, Esq.

3d May 1853.

conjunction with this interpretation which has been put Judges, and which will enable the Session Judge to convict dacoits, will be effectual in putting down the crime.

5185. Would it not be advisable to have an establishment for the suppression of dacoitee, similar to that which was created for the suppression of thuggee?

Mr. Wauchope's appointment is very much of the same nature; but as dacoitee has prevailed only in five or six districts round Calcutta, the Government has not thought it necessary to appoint more than one officer.

5186. The officers appointed to suppress thuggee take cognizance of thuggee committed in foreign states, do not they?

Yes.

5187. *Chairman.*] Where do prisoners sentenced in Calcutta to transportation undergo their sentence?

In the Tenasserim Provinces, at Arracan and at Moulmein; there are 1,400 prisoners at Moulmein who have been sentenced to transportation from Calcutta, and, I believe, from Madras.

5188. Are they kept compulsorily at work upon public works, or are they sent out with tickets of leave?

There are no men sent out upon tickets of leave; they are employed in repairing the roads; and Colonel Bogle has lately introduced various trades into the gaol, so that the men work at the trade to which they originally belonged, and support themselves in that way.

5189. What becomes of them when the term of their transportation has expired?

There was some little difficulty upon that subject; it was understood that the Government of Bengal had ordered them to be released, and that the Commissioner of the Province stated, that it would be unfair to let such men loose upon the Province after the period of their transportation had expired; but how they have settled the question I am not able to say.

5190. What is your opinion of the use of the English language as the language of the Courts in India?

I do not think it is possible to introduce the English language into the Mofussil Courts as the language of business. The Mahomedans introduced their own language, which was then the Persian, and it kept possession of the country as the official language for 600 years. When the British Government took charge of the administration, in order to avoid anything like a violent change, the old language was continued in the Courts, more especially as all the officers of the Court were perfectly well acquainted with it; but gradually the natives began to complain that the language used in the administration of justice and in the Fiscal Courts was a language entirely foreign to them. A general desire arose for the employment of their own language; and about the year 1835 (that is 18 years ago), the Government of India restored to the natives, after six centuries of disuse, their own language in the transaction of their own business, and at present Bengalee is universally employed throughout the Courts in Bengal, and Hindostanee in the Courts in the North-West Provinces: this innovation has been exceedingly popular among the natives; perhaps it is a more popular measure than any that we have ever introduced in India; and I think that any attempt to abolish the use of the Bengalee language and to introduce English into the Courts would not only be exceedingly unpopular, but that it would create a degree of disaffection which the Government would be very sorry to encounter; at the same time it would unquestionably impair the administration of justice. At present the first inquiry that a native makes when a European comes to take his seat in the Court, either as a Civil or Sessions Judge or as a Magistrate, is, "To what extent does he understand the vernacular tongue;" for they firmly believe, that in proportion to his ignorance of the popular language will be his subserviency to some influential natives in the Court. There is a natural tendency on the part of the native officers in the Courts to use the Hindostanee language, with which they are all familiar, and with which every Judge and every Magistrate is also acquainted, because it is a kind of *lingua franca,* and the Magistrates have sometimes been under the necessity of inflicting a fine upon every man who ventured to address them in Hindostanee; that is,

in

in a language that was unknown to the great body of the people, though familiar to the native officer and the presiding Judge.

J. C. Marshman, Esq.

3d May 1853.

5191. Without assuming any violent measure of legislation or any judicial order to introduce the English language as the sole language of Indian judicial functions, is there at present a tendency, more especially as you approach the Presidencies themselves, to extend the employment of the English language even to pleadings in the courts of justice?

There is no such tendency to employ the English language in the pleadings of the Courts, partly because no native vakeel is sufficiently acquainted with it to be able to plead in it, and partly because it is prohibited by the regulations. The knowledge of English, notwithstanding all the efforts that have been made to introduce it among the people, is exceedingly limited; it is confined in a great measure to the Presidency and to the districts in its immediate vicinity; there are many districts in Bengal in which you will not find 20 natives capable of conversing in the English language; although great progress has been made in acquiring a knowledge of English by the natives, it is still a foreign language, and it will continue to be a foreign language throughout the country, whatever efforts we may make to introduce it. The higher classes of natives will always pride themselves upon speaking English; but at this present time, we have not 2,000 natives in and around Calcutta who are able to use it with any degree of fluency, so as to make themselves generally understood, or to enter freely into conversation with Europeans: this is after 25 years' strenuous exertion to inculcate a knowledge of the English language in all the missionary institutions and in all the Government Colleges. I believe that at this time you would not find 800 natives who are able to decide the merits of a case from the evidence given in the English language, and from the address of the Counsel and the charge of the Judge.

5192. Taking the evidence that you have just given, and assuming that the laws made, by whatever authority, are originally made in the English language, it would seem to follow that the knowledge of the contents and obligations of those laws must be communicated to the natives whom you have described through the medium of translations; do you see any practical difficulty worthy of consideration in giving in the vernacular languages translations of the laws which bind the natives?

It depends almost entirely upon the character of the regulations; there are some regulations of the government that are absolutely untranslateable; on the other hand, there are others so exceedingly simple, that they can be put into the vernacular tongue with the greatest ease, and are generally and universally understood by the natives.

5193. Are those as to which the difficulty exists, the laws which use English technical terms, for which there can be no precisely corresponding words found in the Oriental languages?

In a great measure; but there is a regulation, usually called Mr. Holt Mackenzie's Regulation, either VII. or XI. of 1822, in which there are very few terms of English law, but which at the same time is so complicated as to be absolutely untranslateable.

5194. Would you apply those observations as to an inherent difficulty of translation to Mr. Macaulay's Criminal Code?

I have gone carefully through Mr. Macaulay's Criminal Code; I think there would be great difficulty in making the code as it stands now perfectly intelligible to the natives, and that it requires to be more simplified in its construction before it can be turned into the vulgar tongue.

5195. Earl of *Ellenborough.*] Is the Bethune Code more simple and more translateable?

That has never been published.

5196. Have you read it?

I have not seen it; it is understood that Mr. Bethune wrote a new code. All these codes have been referred now to Mr. Peacock; and it is likely that he will also draw up a code of his own.

5197. Lord *Monteagle* of Brandon.] In relation to one of the projects of the Law Commission, you are, no doubt, familiar with that which is generally termed the

J. C. Marshman, Esq.

3d May 1853.

the Lex Loci, namely, the introduction of a law into the Mofussil, which would be common to all classes of the people; is it your opinion, without going into the merits of that particular mode of accomplishing the object, that the object itself is one of very great importance to the interests of India?

I consider it a question of the highest importance to the interests of the country.

5198. Do you think that the present uncertain state of the law in the Mofussil, particularly as affecting persons not Hindoos or Mahomedans, throws obstacles in the way of the settlement of independent English capitalists, who would otherwise be disposed to establish themselves, and to prosecute any branch of industry in the country?

I should explain, that when your Lordship alluded to the Lex Loci, I thought you were referring to that which the natives themselves have always considered the Lex Loci, that is, the Act for the establishment of liberty of conscience.

5199. That was only one single clause of it. What I referred to is that fragment of the code which comprehended the common law to be introduced into the Mofussil, as applicable to British, Armenians, Hindoos and Mahomedans; saving, of course, the religious observances and rights of property of the two latter classes; you are aware that such a code was prepared?

I am aware that it was. It is a matter of considerable importance that the laws by which those who are not Hindoos and Mahomedans are to be governed should be defined; but it is not a matter of such paramount importance as, perhaps, the Commissioners have considered it.

5200. Supposing a capitalist were disposed to fix himself in the interior of India, to prosecute any branch of industry there, whether in cotton, in sugar, in indigo, or in other branches of manufacture or production that might expand in that country, do you think that the present uncertain state of the law in the interior, as affecting him, throws any difficulty or discouragement in the way of his settlement in that country?

I do not think that the discouragement arises so much from the want of the law of this Lex Loci as from other causes.

5201. What are those?

It is absolutely necessary that the Government should insist on punctuality in the payment of the revenue. The rule in the Lower Provinces is that every quarterly instalment of revenue shall be paid punctually by sunset of the day upon which it is due, and if one instalment is not paid, the estate is forfeited, and put up to sale, and sold to the highest bidder. This is the great obstacle to Europeans purchasing land in India, because a man having thus purchased land can never leave it with safety. If he were to make it the finest estate in the district, and bring it to the highest state of improvement, still, when he has occasion to visit England, he must leave it in the hands of agents, who have only fraudulently or undesignedly to fail in the payment of the quarterly revenue by a certain moment, and the whole estate disappears.

5202. Earl of *Ellenborough*.] And it would probably be bought by his own agent?

Very likely.

5203. Lord *Elphinstone*.] But that does not apply to other parts of India; in the North-Western Provinces, for instance, lands are not saleable for arrears of revenue?

I believe they are.

5204. Lord *Monteagle* of Brandon.] Do you think that the uncertainty of property has been at all increased by the proceedings, of which you must be cognizant, with respect to the resumptions?

I do not think the system of resumptions has had anything to do with the insecurity of property at all. The resumptions have now altogether ceased, unless, indeed, the late decision of the Privy Council here should destroy all the decisions that have passed in the Courts, and restore the whole of the property to the natives again. But that has not had any effect whatever upon the security or insecurity of property generally. The lands that have been resumed belong to the

J. C. Marshman, *Esq.*

3d May 1853.

the Government, and those that have not been resumed have been confirmed; so that every native is certain of enjoying the lands that have passed through the ordeal, in the same manner as he enjoys repossession of any other portion of his estate.

5205. Were not those resumption cases in India tried before a special tribunal appointed for that purpose?

They were.

5206. Can there be any permanent security for property in a country where, in a question between the Government itself and the subjects of that Government, the issue being the right to land in the possession of the subject, and claimed by the Government, those cases are to be tried before a special tribunal appointed by the Government itself?

Those special tribunals were called special because they had no other suits of any other kind to try; but they were to try them precisely in the same manner as the established Civil Courts would have tried them.

5207. But they were appointed by the Government?

Yes: but so must have been also the Judges in the other Civil Courts.

5208. But do you not see a great distinction between trying such cases before Judges who are generally appointed for all judicial functions, and trying them before Judges specially appointed to try that particular class of cases?

There certainly is a popular objection to the establishment of such a tribunal: but the Government had no option whatever between giving up the resumptions altogether, or appointing a Court for the special trial of them.

5209. Has not the result of the decision of the Privy Council been to confirm the possession in the hands of the original possessors after a certain number of years' possession, which they hold to constitute a limitation, when under the Indian decisions that possession for the same number of years would not have confirmed the title?

It is a very difficult question, and it is scarcely possible to answer it without having all the documents before me; but it was generally understood in India, that if in the Privy Council there had been some one officer as an assessor, a retired Judge from either Madras or Calcutta, or any of the Presidencies, who was thoroughly acquainted with the law of India, and with the procedure and practice of the Courts, the decision might probably have taken a different character.

5210. Earl of *Ellenborough.*] Is not it always considered that it is a defect in the constitution of the Judicial Committee of the Privy Council that they have not some gentleman who is well acquainted with the Mofussil law of India?

It is considered as a very great defect in the constitution of the Judicial Committee of the Privy Council. They have now one officer, a retired Judge from the Crown Courts, but no Judge from the Company's Courts; and I believe that the number of cases appealed from the Company's Courts is rather larger than the number appealed from the Queen's Courts.

The Witness is directed to withdraw.

J. C. Melvill, Esq.

JAMES COSMO MELVILL, Esquire, is again called in, and further examined as follows:

5211. Lord *Monteagle* of Brandon.] YOU have in your memory the 43d section of the last Charter Act, as we commonly call it, which provides for the legislative power in India, and which is as follows: "And be it enacted, that the said Governor-general in Council shall have power to make laws and regulations for repealing, amending or altering any laws or regulations whatever now in force, or hereafter to be in force in the said Territories, or any part thereof, and to make laws and regulations for all persons, whether British or Native,

J. C. Melvill, Esq.

3d May 1853.

Foreigners or others, and for all Courts of Justice, whether established by his Majesty's Charters or otherwise, and the jurisdictions thereof, and for all places and things whatsoever within and throughout the whole and every part of the said Territories, and for all servants of the said Company within the dominions of Princes and States in alliance with the said Company; save and except that the said Governor-general in Council shall not have the power of making any laws or regulations which shall in any way repeal, vary, suspend or affect any of the provisions of this Act, or any of the provisions of the Acts for punishing Mutiny and Desertion of Officers and Soldiers, whether in the service of his Majesty or the said Company, or any provisions of any Act hereafter to be passed in anywise affecting the said Company, or the said Territories or the inhabitants thereof; or any laws or regulations which shall in any way affect any prerogative of the Crown or the authority of Parliament, or the constitution or rights of the said Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the Sovereignty or Dominion of the said Crown over any part of the said Territories." Referring to that enactment, has a construction been put practically by the East India Company upon that clause, which in any degree restrains the powers of the legislative authority in India in any case, except the excepted cases which are regulated in the Statute?

I am not aware of any such construction having been put upon the enactment referred to.

5212. Are you aware of any cases in which laws, or projects of laws, having been sent over to this country, have been returned, with instructions that that subject should not be made a matter of future legislation?

I am not. Cases have arisen, in which it has been doubted whether they did not fall within the exceptions specified in the enactment.

5213. Can you specify any of those cases?

I am not at present prepared with a list of the cases.

5214. Do you remember a case, for example, with respect to the formation of something like a Small Debts Court in Bombay?

I recollect that case.

5215. In that case, as well as in another case, did not the East India Company take the opinion either of their own counsel or of the law officers, to know whether they were justified, under the provisions of that Act, in putting an inhibition, *à priori*, upon the legislative authority in India entertaining that particular law?

There was a reference to counsel upon the subject.

Vide Case and Opinion, (1.), p. 591.

5216. Will you have the goodness to produce the case and opinion?

I will.

5217. Therefore your view of the construction of that clause now is, that, save and except in the expressly excepted cases, the power conferred by the Statute upon the legislative authority of entertaining legislative questions is free?

Clearly so.

5218. Of course, not restraining the power of disallowing and directing the repeal, which is vested in the Home Government?

Certainly.

5219. Now, I wish to call your attention to the 53d clause of the last Charter Act, which, in its margin, states, "A Law Commission to be appointed to inquire into the Jurisdiction, &c. of Courts of Justice and Police Establishments, and the operation of the Laws." That clause enacts, "That the Governor-general of India in Council shall, as soon as conveniently may be after the passing of this Act, issue a Commission, and from time to time Commissions, to such persons as the Court of Directors, with the approbation of the Board of Commissioners, shall recommend for that purpose, and to such other persons, if necessary, as the Governor-general in Council shall think fit; all such persons not

exceeding in the whole at any one time five in number, and to be styled, 'The Indian Law Commissioners,'" and so on. Does that clause in any respect contemplate, as a matter of legal understanding, the cessation of the Law Commission, or does it not rather expressly, by using the words "Commission, and from time to time Commissions," and a quorum of five, impose upon the East India Company the duty and obligation of continuing the Law Commission during the period that that Act was in force?
Legal opinions were taken upon that point.

5220. Will you have the goodness to furnish the Committee with those legal opinions?
Certainly.

Vide Opinions, (2.) p. 593.

5221. At the very time when the Court was appealed to to fill up the number of the Law Commission which by vacancies had been reduced below the number of five, was not the official reply, in declining to fill up the number, that it was the intention of the Company to apply to Parliament for the repeal or alteration of that clause?
I believe that to have been the case.

5222. Was any such application made at any time?
There was a correspondence with the Board of Commissioners for the Affairs of India upon the subject.

5223. Practically speaking, how long since has that Law Commission ceased to exist?
Three or four years.

5224. How long since has it been reduced below the statutory quorum of five?
Several years; it was considered that it might be dispensed with as a matter of economy.

5225. Therefore it was considered expedient to apply to Parliament for the repeal of that clause in the Charter Act?
It was thought that it could not be done without an application to Parliament.

5226. And no such application was made to Parliament?
I think not.

5227. At all events the statute law of the land upon that subject stands now as it was regulated by the Act of 1833?
Yes.

5228. You are aware that by the following section, the 54th section, in the execution of the duties entrusted to them, the Law Commission are directed to follow the instructions which they receive from the Government of India, and to pursue the course which shall be so recommended to them?
I am.

5229. Now I wish to call your attention to the 103d section of the last Charter Act, which, in reference to the appointments of civil servants, directs, that "Whereas it is expedient to provide for the due qualification of persons to be employed in the civil service of the Company in the said Territories; be it therefore enacted, that the Governor-general of India in Council shall, as soon as may be after the 1st day of January in every year, make and transmit to the Court of Directors a prospective estimate of the number of persons who, in the opinion of the Governor-general in Council, will be necessary, in addition to those already in India, or likely to return from Europe, to supply the expected vacancies in the civil establishments of the respective Governments in India;" and that in the month of June in every year those estimates shall be considered by the Court and by the Board, and revised according to what appears to be their better judgment?
Yes.

5230. This Act passed in the year 1833; therefore the first of those estimates would by law have been required to be made by the Governor-general on the 1st

J. C. Melvill, Esq.

3d May 1853.

1st January 1835, and to have been repeated in successive future years; can you furnish the Committee with copies of those estimates?
Yes.

5231. Were they made regularly in the terms of the statute?
Yes; the Government of India sent home an estimate. To the best of my recollection there was an informality in the first estimate, and I think it was subject to revision afterwards; but the estimate certainly came home, and the Board of Commissioners for the Affairs of India exercised their authority with respect to it under the statute.

5232. Were those estimates regularly sent?
Yes; the estimate comes home every year.

Vide Estimates, (3.), p. 595.

5233. Could you furnish the Committee with the estimates of that description, from the commencement of the system up to the passing of the Act in 1837, when the system was changed?
Certainly.

5234. Then the Statute proceeds to enact, that for every vacancy which the Court and the Board consider as requiring to be filled up by a Haileybury appointment, there shall be four candidates named, out of which, upon examination, one shall be chosen; how long was that system carried into effect?
It was never carried into effect.

5235. Not from the passing of the Act?
Never. Soon after the passing of the Act, communications passed between the Court of Directors and the Board of Commissioners for the Affairs of India, and which terminated in both the authorities agreeing in opinion, that it was desirable to substitute for the fourfold system a system of examination upon an absolute test, previously to the admission to Haileybury, under regulations framed, and Examiners appointed by the Board of Commissioners for the Affairs of India, independently of the Court of Directors. This change received the sanction of Parliament.

5236. By the 7th of William the 4th, and 1st of Victoria, c. 70?
Yes, that is the enactment.

5237. But from the passing of the Act of 1833, or rather more properly speaking from the time when it came into operation, up to the enactment of the Act of 1837, there was during that time no practical attempt to comply with the express provisions of the antecedent Act?
There was not.

5238. Lord *Broughton*.] But there was frequent communication between the Court and the Board with respect to the best mode of carrying it into effect?
There was.

5239. Lord *Monteagle* of Brandon.] Had you any correspondence with the Government of India upon that subject?
Not with the Government of India, but with the Board of Commissioners for the Affairs of India.

Vide Correspondence, (4.), p. 599.

5240. Will you be so good as to furnish the Committee with copies of that correspondence?
Certainly.

5241. Now we come to the period of 1837, the enactment of the law which changed the rule in this respect; are you aware of any difference in the law as it was proposed in the House of Commons in the shape of a Bill, and the law as it ultimately received the Royal Assent?
I am not.

5242. The Bill, I believe, was originally introduced, giving the power to suspend the fourfold recommendation; and the Act, as amended in its progress through the House of Lords, was altered so far as to make the Act give the power to suspend and to revive?
The existing law gives the power to revive as well as to suspend, but I was not aware that the words "to revive" had been introduced in the progress of the Bill.

J. C. Melvill, Esq.

3d May 1853.

5243. Assuming that to be so, there has been no attempt made to revive the operation of those enactments from that time to the present?

Certainly not.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next,
Two o'clock.

(1.)

CASE FOR THE EAST INDIA COMPANY.

(Referred to in page 588, Question 5216.)

WITH reference to the case now before you on the question of the validity of the new rules of what is termed the Small Cause Court at Bombay, you are requested to refer to the accompanying letter from the Government of India, dated the 4th September 1847, transmitting a letter from Sir Erskine Perry, dated 7th August 1847, with proposed further rules for the Small Cause Court of the 5th August 1847, and Minutes of Council thereon; also a letter from the Bombay Government, dated the 14th December 1847, on the table of fees for the Small Cause Court; also a letter from the Bombay Government, dated 31st December 1847, on the subject of the extension of the Small Cause Court rules, with its enclosures.

It may be proper also to trouble counsel with the subjoined copy of a letter, dated the 15th November last, which the President of the India Board has received from the Chief Justice of the Supreme Court:

Sir, Supreme Court, Bombay, 15th November 1847.

I have the honour to acknowledge your letter of the 24th September last, informing me that a question had arisen respecting the legal power of the Supreme Court to make certain rules of the 22d April last, which have been confirmed by Her Majesty in Council, and recommending me not to act on such approbation until the legal question shall be settled.

The rules in question, with two insignificant exceptions relating to equitable claims, which have never been acted upon, have the same legal basis in the words of the Charter, and the approval of Her Majesty in Council, that all the jurisdiction of the Small Cause Court has, as exercised by various Judges during the last 50 years.

If therefore this legal basis is now deemed to be insufficient, an Act of Parliament should be procured to ratify retrospectively all that has been done under the colour of law during that period.

With reference to any doubts which have been raised, and which, I suppose, are traceable to objections of the Advocate-general Le Messurier, with a copy of which I was kindly furnished by the Bombay Government, it appears to me to be clear that the Charter of Justice gives ample power to the Judges, though not in very artificial language, to frame such rules of procedure as they think most consonant to the ends of justice. The first Recorder, Sir William Syers, put this construction on the words of the Charter in 1799, when he established a simple mode of pleading for certain causes in the Small Cause Court, and the repeated confirmation of such rules by the King in Council appear to show that this *contemporanea expositio* of the clause in question was approved and confirmed.

In deference, however, to your recommendation, I beg to state that I shall consider the approbation of Her Majesty in Council as suspended until I hear further from you. As, however, the rules which enable causes up to 600 rupees in amount to be tried simply and cheaply have been in operation for six months with signal benefit to the public, and as it would cause much inconvenience to suitors to compel them to return to much more expensive procedure, I am happy to be able to inform you, that in the opinion of my learned colleague, Sir William Yardley and myself, a perfect legal basis for the rules in question is forthcoming, independent of any power of the Judges under the Charter, or of Her Majesty in Council approved.

Under the 2d & 3d Vict. c. 34, power is given to the Judges to alter the mode of pleading, with the approval of the Governor-general in Council; and as, when Sir David Pollock and myself framed the rules of April last, I recollected the opposition which Mr. Le Messurier had made (though fruitlessly) upwards of 20 years ago to similar rules framed by

J. C. Melvill, Esq.

3d May 1853.

by Sir Edward West, I took the precaution of submitting these new rules to the Supreme Government, and have received their confirmation of them.

I have, &c.

(signed) E. PERRY.

The power of legislation given to the Governor-general of India in Council is contained in the following sections of the Act of the 3d & 4th Will. 4, c. 85:

3 & 4 Will. 4, c. 85, s. 43.

And be it enacted, that the said Governor-general in Council shall have power to make laws and regulations for repealing, amending or altering any laws or regulations whatever now in force, or hereafter to be in force, in the said Territories or any part thereof, and to make laws and regulations for all persons, whether British or Native, Foreigners or others, and for all Courts of Justice, whether established by his Majesty's Charters or otherwise, and the jurisdiction thereof, and for all places and things whatsoever within and throughout the whole and every part of the said Territories, and for all servants of the said Company within the dominions of Princes and States in alliance with the said Company, save and except that the said Governor-general in Council shall not have the power of making any laws or regulations which shall in any way repeal, vary, suspend or effect any of the provisions of this Act, or any of the provisions of the Acts for punishing mutiny and desertion of officers and soldiers, whether in the service of his Majesty or the said Company, or any provisions of any Act hereafter to be passed in anywise affecting the said Company, or the said Territories or the inhabitants thereof, or any laws or regulations which shall in any way affect any prerogative of the Crown, or the authority of Parliament, or the constitution or rights of the said Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the said Crown over any part of the said Territories.

XLIV. Provided always, and be it enacted, That in case the said Court of Directors, under such control as by this Act is provided, shall signify to the said Governor-general in Council their disallowance of any laws or regulations by the said Governor-general in Council made, then and in every such case, upon receipt by the said Governor-general in Council of notice of such disallowance, the said Governor-general in Council shall forthwith repeal all laws and regulations so disallowed.

XLV. Provided also, and be it enacted, That all laws and regulations made as aforesaid, so long as they shall remain unrepealed, shall be of the same force and effect within and throughout the said Territories as any Act of Parliament would or ought to be within the same Territories, and shall be taken notice of by all courts of justice whatsoever within the same Territories, in the same manner as any public Act of Parliament would and ought to be taken notice of; and it shall not be necessary to register or publish in any court of justice any laws or regulations made by the said Governor-general in Council.

XLVI. Provided also, and be it enacted, That it shall not be lawful for the said Governor-general in Council, without the previous sanction of the said Court of Directors, to make any law or regulation whereby power shall be given to any courts of justice, other than the courts of justice established by his Majesty's Charters, to sentence to the punishment of death any of his Majesty's natural-born subjects, born in Europe, or the children of such subjects, or which shall abolish any of the courts of justice established by his Majesty's Charters.

Adverting to the several communications which appear by the papers before you to have been made by the Judges of the Supreme Court of Judicature at Bombay,

> You are requested to advise as to the best means of attaining the objects which the Judges of the Supreme Court of Judicature at Bombay have had in view in the jurisdiction purporting to have been given by them to the Small Cause Court at that Presidency.

WE are of opinion that, in order to attain the objects in view, the aid of the Legislature will be required. It appears to us that some of the purposes in view, especially some of the objects included in the Rules of April 1847, and August 1847, cannot effectually be attained by any other course.

We think the purpose may be effected either by an Act of the Imperial Legislature, or by an Act of the Indian Legislature, to be passed under the powers of the 3 & 4 Will. 4, c. 85, s. 43.

Whichever course is followed, the Act is one which will require much caution and consideration in framing it. If the Act shall be prepared under the statute 3 & 4 Will. 4, c. 85, care must be taken so to frame the Act as to keep it clearly within the powers of that statute.

(signed) JOHN JERVIS.
DAVID DUNDAS.
LOFTUS WIGRAM.

22 February 1848.

(2.)

OPINIONS.

(Referred to in page 589, Question 5220.)

My Lord, East India House, 15 December 1842.

We are requested by the Court of Directors of the East India Company to submit to your Lordship the opinion of the Court, that the resignation of Mr. Amos presents a fitting opportunity for reconsidering the constitution of the Legislative Council and the functions of the Law Commission, with a view to take measures for the discontinuance of both, and the substitution of other means for the accomplishment of the object proposed.

2. The Act of Parliament which created these offices requires that new appointments shall be made as vacancies arise; and it is only by another Act that this obligation can be suspended, and any new system substituted. If, however, your Lordship should concur in opinion with the Court that such change is desirable and practicable, the details of the measure to be brought forward in a new Bill may be considered in communication with the Company's law officers.

3. The present expense of the Law Commission is *Rs.*20,887. 10. 8. per mensem, and the salary of the Legislative Councillor is *Rs.*8,360 per mensem; in the aggregate, *Rs.*3,50,972 per annum. The financial advantage of extinguishing, or greatly diminishing, this charge is obvious. The question is, whether the continuance of those offices is essential to good legislation for India.

4. The drafts of laws which are to affect the rights of British subjects in India, and to be binding on the Supreme Court, without the necessity of registration, must necessarily pass under the revision of one or more persons thoroughly conversant with English law.

		Co.'s Rs.	*a.*	*p.*
Indian Law Commission:				
The Hon. A. Amos,* President of the Commission -				
Charles Hay Cameron (Barrister-at-Law), Member -		4,354	2	8
Frederick Millett, Member - - - - - -		4,354	2	8
Daniel Elliott, Member - - - - - - -		4,354	2	8
H. Borradaile, Member - - - - - - -		4,354	2	8
J. J. C. Sutherland, Secretary - - - -		3,000	–	–
Office Establishment:				
A. A. Sevistre, Head Clerk - -	*Rs.* 200			
W. J. Hutchinson, Writer -	100			
3 Chupprassies, at *Rs.* 5 each	15			
1 Duftery - - - -	6			
Office Rent - - - -	150			
		471	–	–
Co.'s Rs.		20,887	10	8
The Hon. A. Amos, 4th Ordinary Member of Council - - - - - - -		8,360	–	–
Co.'s Rs.		29,247	10	8

5. In the discussions carried on under the government of Lord William Bentinck, which form the principal portion of the Fifth Appendix to the Honourable Company's Judicial Report of 1831 on the formation of a Legislative Council, and in those portions of the Minutes of Evidence in 1832 which relate to the same subject; none of the suggestions brought forward point to the measure which was finally adopted. The point chiefly dwelt on was the introduction into council, on questions of legislation, of the Chief Justice, or the Judges of the Supreme Court. This, and the other suggestions in the papers referred to, may be reconsidered, if your Lordship should agree with the Court in the expediency of substituting another and less expensive agency for that of the Law Commission and the Legislative Councillor.

We have, &c.
(signed) J. L. Lushington.
John Cotton.

The Right hon. Lord Fitzgerald and Vesci,
&c. &c. &c.,
India Board.

Sir, India Board, 28 February 1843.

With reference to the letter from the Chairman and Deputy to the President of the Board of Commissioners for the Affairs of India, I am directed to transmit to you, for the information of the Court of Directors, a copy of the opinion of the law officers of the Crown on the case submitted to them respecting the making of any appointment to the office of the Legislative Member of Council at Calcutta.

As it is considered expedient that no appointment should be made at present to fill the vacancy created by the retirement of Mr. Amos, till the sense of Parliament shall have been ascertained upon the subject, I am desired to acquaint you, that it is not the intention of this Board to recommend to the Crown to take advantage of the power conferred by the 60th section of the Act 3 & 4 Will. 4, c. 85, to make an appointment, in the event of the Court's delaying to do so for two months after the occurrence of the vacancy.

I am, &c.
(signed) J. E. Tennent.

J. C. Melvill, Esq.

3d May 1853.

OPINION.

If it be intended to submit to Parliament the abolition of the office of the fourth member of Council, we see no objection to postponing the appointment until the sense of Parliament shall be taken: the appointment is not so compulsory as not to admit of the delay necessary to bring the subject before the two Houses.

(signed) F. POLLOCK.
W. W. FOLLETT.

28th February 1843.

LEGISLATIVE DEPARTMENT, 1st March (No. 3) 1843.

Our Governor-general of India in Council.

Legislative Councillor and Law Commissioner.*

* Resignation of Mr. Amos.

1. We now reply to your letter, dated 5th August, No. 23 of 1842.

2. It appears to us that the resignation of Mr. Amos presents a fitting opportunity for reconsidering the constitution of the Legislative Council, and the functions of the Law Commission, with a view to take measures for the discontinuance of both, and the substitution of other means for the accomplishment of the objects proposed.

3. Before coming, however, to any final determination on these points, we are desirous to have the benefit of your opinion respecting them.

4. The Act of Parliament which created these offices requires that new appointments shall be made as vacancies arise, and it is only by another Act that this obligation can be annulled, and any new system substituted.

5. The drafts of laws which are to affect the rights of British subjects in India, and to be binding on the Supreme Court, without the necessity of registration, must necessarily pass under the revision of one or more persons thoroughly conversant with English law.

6. You will, of course, not overlook the discussions on this subject which was carried on under the government of Lord William Bentinck.

INDIAN LAW COMMISSION:				*Co.'s Rs.*	*a.*	*p.*
The Hon. A. Amos,* President of the Commission -				—		
Charles Hay Cameron, Barrister-at-Law, Member -				4,354	2	8
Frederick Millett, Member - - - - - -				4,354	2	8
Daniel Elliott, Member - - - - - -				4,354	2	8
H. Borradaile, Member - - - - - - -				4,354	2	8
J. J. C. Sutherland, Secretary - - - - -				3,000	-	-
OFFICE ESTABLISHMENT:						
A. A. Sevistree, Head Clerk - -	*Rs.* 200	–	–			
W. J. Hutchinson, Writer - -	100	–	–			
3 Chuprassies, at *Rs.* 5 each - -	15	–	–			
1 Duftery - - - - - -	6	–	–			
Office Rent - - - - - -	150	–	–			
				471	–	–
Co.'s Rs.				20,887	10	8
The Hon. Andrew Amos, 4th Ordinary Member of Council - - - - - - - -				*8,360		
Co.'s Rs.				29,247	10	8

7. The present expense of the Law Commission is *Rs.* 20,887. 10. 8. per mensem, and the salary of the Legislative Councillor is *Rs.* 8,360 per mensem; in the aggregate, *Rs.* 3,50,972 per annum. The financial advantage of extinguishing, or greatly diminishing, this charge is obvious. The question is, whether the continuance of those offices is essential to good legislation for India.

8. We defer the further consideration of this question till we are in possession of your reply to this reference.

9. In the meantime it is a matter of public expediency that any appointment in the room of Mr. Amos should be suspended; and we desire that you will abstain from making any temporary nomination till further advised by us, or unless you should find it absolutely necessary under section 48 of 3 & 4 Will. 4, c. 85.

We are, &c.
(signed) J. L. LUSHINGTON.
JOHN COTTON,
&c. &c.

London, 1st March 1843.

LEGISLATIVE DEPARTMENT, 29th November (No. 22) 1843.

Our Governor-general of India in Council.

Legislative Councillor and Law Commission.

Governor-general's Legislative Letter,* 22 Apr. (No. 1) 1843.
Whole Legislative Letter, 12 May (No. 9), 1843.

* Transmitting Special Reports.

Whole Legislative Letter, 12th May (No. 9) 1843.

Para. 1. We have now had under our consideration the sentiments of the several members of your government conveyed to us in your letters noted in the margin, in reply to our despatch dated 1st of March last, with regard to the question how far it may be necessary or expedient to continue the Law Commission, and the appointment of fourth member of the Council of India.

J. C. Melvill, Esq.

3d May 1853.

2. Considering the nature and extent of the legislative authority vested in the Government of India by the 3 & 4 Will. 4, c. 85, we have come to the conclusion that the appointment of fourth member of Council cannot, without detriment, be dispensed with. We have also adverted to the opinion of former Governments, in which you have expressed a general concurrence that it is of importance, with a view to the efficient performance of the duties belonging to that appointment, that the person filling it should be present at all meetings of Council for the administration of the affairs of Government. In conformity to that opinion, we desire that the presence of the fourth member of Council may not be restricted to meetings held for the purpose of passing laws and regulations; but, at the same time, you will bear in mind that, at such meetings only, is he entitled to a voice in your proceedings.

3. We concur in the opinion which appears to be entertained by every member of your Government (including both Mr. Amos and Mr. Cameron), that the Law Commission ought not to be continued on its present footing. Benefit has doubtless resulted from its labours, the fruits of which may hereafter be still further turned to the public advantage. But we are satisfied that the objects contemplated in the 53d section of the 3 & 4 Will. 4, c. 85, are not attainable by means of such a Commission, and that the services which it is capable of rendering are not commensurate to the heavy expense with which it is attended. Under this impression, it is probable that an application will be made to Parliament at an early period of next session, for authority to put an end to the Commission. In the mean time we desire that you will not fill up any vacancy which may occur amongst its members, and that you will be prepared to give directions for closing the Commission, if the wisdom of Parliament should concur in that measure.

We are, &c.

(signed) J. Cotton,
J. Shepherd,
&c. &c.

London, 29th November 1843.

(3.)

THE ESTIMATES of Civil Servants received from the Government of India between the passing of the Act of 1834 (3 & 4 Will. 4, c. 85), and the Act of 1837 (7 Will. 4, and 1 Vict. c. 70.)

(Referred to in page 590, Question 5233.)

General Department, No. 8 of 1835.

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

1. Our last letter in this department was dated 28th February, No. 7 of 1835.

2. The object of our present despatch is to comply with the provision contained in 103d section, Act 3 & 4 Will. 4, c. 85, by preparation of a prospective estimate of the number of civilians required at each Presidency to replace vacancies by death, retirement or dismissal.

3. The said estimate is required for such one of the subsequent years as shall be fixed in certain regulations to be made by the Board of Control for the management of the Haileybury College. But as no copy of any such contemplated regulations has been yet furnished to us, we are only able to comply with the provision by forwarding, for the information of your honourable Court, a statement of the present disposition of the three civil services, and of the proportionate supply of officers required for the next two years at each Presidency.

Letter to the Chief Secretary, Fort St. George, dated 25 Nov. 1834.
Ditto to Bombay and Agra.
Letter from Secretary to Government of Agra, dated 1 December.
Note by the Secretary, in the General Department, dated 20 Jan. 1835, with a Disposition Statement.
Letter from the Chief Secretary at Fort St. George, dated 23 Dec. 1834, and its Enclosure.
Letter from the Secretary to Government, at Bombay, dated 2 Jan. 1835, and its Enclosure.
Report of the Finance Committee, dated 16 Dec. 1831.

4. In forming this estimate, we have simply considered the state of the services as at present constituted, and with a view to maintain the executive administration, as far as is entrusted to them, in a state of efficiency on its present footing.

5. The total number of civilians now in active employment on the Bengal Establishment, including the Agra Presidency, is 417, on that of Madras 172, and in the Bombay Presidency 110. Now, on the assumption that the present system of administration at each of the three Presidencies be continued, some alteration seems indispensable to equalize promotion, and preserve the due proportion of junior assistants and superior officers at Madras and Bombay: making this adjustment on the principles explained in the note of the Secretary of the Supreme Government, the number of employés will be fixed at—

Bengal - - - - - - - - - - -	410
Madras - - - - - - - - - - -	185
Bombay - - - - - - - - - - -	96

and adding to these numbers, according to the present estimate respectively, 90, 55 and 44, to to provide for officers out of employ or absent on furlough, and for college students (with the addition of 10 servants to the existing number of the latter on the Bengal establishment, in consequence of the juniors being on an unusually low scale at the present time), we have a total of—

	BENGAL.	MADRAS.	BOMBAY.
Employés - - - - - - - -	410	185	96
Absent - - - - - - - - - -	90	55	44
Addition on Establishment - - - - - -	10	—	—
TOTAL - - -	510	240	140

6. These are respectively the numbers to be kept up at the three Presidencies; and the totals do not much differ from the actual number of names now on the lists of the three civil establishments.

7. Assuming these as the proper complements of names, we find the proportion of their respective rate of supply to be, for the next two years, in the Bengal Presidency, 25; for taking the deaths on this establishment, as shown by Tables, for the last three years to be 2½ per cent., and the dismissals and retirements at 12 per annum, the annual supply may (in round numbers) be fairly estimated, for Bengal and Agra, in the proportion above stated.

8. The ordinary supplies required, on the same principle, for the other two Presidencies, are estimated, in our Secretary's note, at 12 and 7½. But with reference to the rate of supply for the next two years to the civil establishments on these two Presidencies, we entirely concur in the reasons assigned in the Secretary's report for supplying Madras for the next two years with something more than its quota, and sending no more officers to Bombay until the present supernumeraries there shall have been absorbed.

9. We beg leave at the same time to express our opinion of the impossibility of maintaining the present establishment of the civil service, and of giving that extension to the employment of native agency which we deem indispensable to the improvement and efficiency of the general administration. The state of our finances would preclude our giving to the latter, even if it could bear the burthen of the former, which is doubtful, that amount of remuneration which can alone secure integrity and efficiency.

We have, &c.
(signed) W. BENTINCK.
A. ROSS.
Fort William, 28th February 1835. W. MORISON.

P.S.—We annex the original papers referred to in this despatch, a letter under date 31st ult., from the Chief Secretary at Bombay, with a communication from the Revenue Commissioner, stating the number of assistants required to supply casualties in the collectorates of that Presidency.

GENERAL DEPARTMENT, No. 8 of 1836.

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

WE now transmit to your honourable Court the estimate of civil servants required at the three Presidencies, made up as ordered in your despatch, dated 10th December 1834, for the year 1839. The estimate forwarded in the letter of this department, dated 28th February 1835, will, we conclude, be considered by you as that referred to in para. 115 of the despatch cited, being that framed "next after January 1835, and stating the number of persons required to supply the expected vacancies in the year 1838."

2. We furnished each of the Presidencies with a form of statement, exhibiting the manner in which the servants belonging to it were employed or disposed of. These we directed to be filled up and returned to us. The delay that has arisen in forwarding the general estimate for all the Presidencies has been occasioned by the necessity of waiting for these returns.

J. C. Melvill, Esq.

3d May 1853.

3. Your honourable Court will perceive that the civil services of the three Presidencies stood, on the 1st January last, as follows:

	UNITED BENGAL and AGRA.	MADRAS.	BOMBAY.
Employed above the rank of juniors - -	289	124	72
Juniors and 2d assistants - - - -	107	36	37
Seniors absent on furlough - - - - -	32	28	21
Juniors on ditto - - - - - - -	18	8	6
Add, applicants of present season sailed before 1st January - - - - - - -	- - -	5	1
Returned from furlough, and still out of employ - - - - - - - - -	6	—	—
Out of employ from other cause - - -	28	5	1
Juniors in college, or training - - -	17	6	4
TOTALS - - -	497	212	142

4. We assume, after taking into consideration the existing proportion of junior assistants now attached to each Presidency, that upon the assumption of offices continuing as at present, there will be required to fill the ordinary vacancies the following number of servants respectively:

	1837.	1838.	1839.
For Bengal - - - - - - - -	25	25	25
– Madras - - - - - - -	18	15	12
– Bombay - - - - - -	2	5	8
	45	45	45

5. For the grounds of this estimate, we beg to refer your honourable Court to the statements annexed, and to the note of the Secretary in this department thereupon. Your honourable Court will perceive that the Governor-general has explained his views, as well upon the above estimate, framed on the assumption that the offices filled by civil servants will continue as at present, as on the possibility of entering upon the consideration of the other questions referred to in the despatch of your honourable Court, as necessarily comprised in these estimates; viz., the circumstances which are likely to increase or diminish the demand for officers of the class for the conduct of the public business. His Lordship has come to the conclusion that these cannot be anticipated, and, therefore, can scarcely be made ingredients of an estimate so much in advance as your honourable Court have required this to be framed; but that the Government has the means of noticing such circumstances as they arise, and it is his Lordship's intention to require this to be done for the Bengal Presidency, and to call upon the other Governments to furnish special reports on the same subject, in order that their future returns and estimates may embrace the subject as far as may be possible.

6. In the above view the other members of the Government have expressed their entire concurrence.

7. We beg, however, to refer your honourable Court to the Minute of his Lordship, as explaining his sentiments more in detail on this important subject.

We have, &c.

(signed) AUCKLAND.
H. FANE.
A. ROSS.
W. MORISON.
H. SHAKESPEAR.

Fort William, the 1st June 1836.

J. C. Melvill, Esq.

3d May 1853.

GENERAL DEPARTMENT, No. 10 of 1837.

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

WE have now the honour to forward statements of the civil services of the three Presidencies of India, with the estimates required by law to be furnished to your honourable Court, in order to enable you to make nominations for the year 1840. We have no knowledge whether those heretofore submitted for the years 1839 and 1838 were satisfactory, and contained the information required by your honourable Court. In the present instance, however, we have followed the same course, and shall continue to do so until more fully informed of your wishes and opinions as to the intention and requirements of the law.

2. From the note laid before us by our Secretary, we extract the following Abstract Statement of the condition of the three Services at the commencement of the present and the two past years, to which is subjoined a notice of the casualties, retirements and fresh appointments of each of the three years reported upon. Our estimates of the wants of the three Services, founded on the results of this statement, including that now submitted for the year 1840, will be found in a separate column.

	BENGAL.		AGRA.		United Presidency of FORT WILLIAM.			MADRAS.			BOMBAY.		
	Employed.	Junior Assistants.	Employed.	Junior Assistants.	Employed.	Junior Assistants.	Indent for Third Year, in Advance.	Employed.	Junior Assistants.	Indent.	Employed.	Junior Assistants.	Indent.
1835, for Indent 1838	218	51	199	76	417	127	25	172	35	15	110	37	5
1836, for 1839 - -	227	56	169	51	396	107	25	160	36	12	109	37	8
1837, for 1840 - -	238	66	155	35	393	101	25	169	39	14	113	39	6

	United Presidency of FORT WILLIAM.			MADRAS.			BOMBAY.		
	1835.	1836.	1837.	1835.	1836.	1837.	1835.	1836.	1837.
Total employed, as above - - - - - -	417	396	393	172	160	169	110	109	113
Juniors training in College, or otherwise - - -	13	17	20	18	6	5	10	4	2
Servants out of employ - - - - -	12	28	13	6	5	9		1	1
Returned from furlough, and out of employ - -	5	6	8	–	–	–	–	–	–
TOTAL present in India, 1st January - -	447	447	434	196	171	183	120	114	116
Seniors on furlough - - - - - -	31	32	24	30	28	22	29	21	13
Add, of the season, not included as employés -	11	–	–	–	5	2	5	1	6
Juniors on leave to Europe - - - - -	17	18	17	–	8	6	–	6	10
TOTAL on the Civil List - - - - - -	506	497	475	226	212	213	154	142	145
Deaths of the year preceding - - - - -	12	15	10	6	4	3	4	3	3
Retirements - ditto - - - - - -	5	2	22	4	7	4	6	2	1
Fresh Appointments arrived in the year - - -	8	11	18	4	5	3	6	4	3

3. Your honourable Court will observe that this estimate, like the two preceding, is founded entirely on a view of the existing condition of the services, and proceeds on the assumption that the offices to be filled by covenanted civil servants will continue without material increase or diminution. We have accordingly framed our estimate upon a comparison of the proportion of substantive offices to the total number of available servants. Deducing from the statements submitted the proportion of junior assistants, and assuming that proportion as the material for determining whether a further supply is required, and to what extent, we find that, under the United Presidency of Fort William, the junior assistants bear to the total of employés, the ratio of one to 3⅘ths; in Madras, one to 4⅓; whereas, under the Bombay Presidency, the juniors are in the proportion of one-third. If the numbers 25, 12 and 8, therefore, represent the ordinary want of the three services to supply the decrement from casualties and retirements, we have concluded it to be desirable to add to the number of the indent for Madras, and to reduce that for Bombay, in order to bring all the three Presidencies to the same proportion. Our estimate for 1840 is, therefore, for Bengal, 25 servants; for Madras, 14; and for Bombay, 6.

4. But, in forwarding this estimate, we deem it necessary to call the attention of your honourable Court to a correspondence that has passed with the Government of Bombay, consequent upon our explaining to the Governor in Council of that Presidency the grounds of

J. C. Melvill, Esq.

3d May 1853.

of our having reduced the estimate submitted by him of the wants of the Bombay Service in the past year.

5. Your honourable Court will observe that the Right honourable the Governor in Council, acting upon the recommendation of the Revenue Commissioner of Bombay, has advocated the expediency of employing covenanted servants in the subordinate charge of petty districts, which would lead to the necessity of increasing largely the number of juniors proportionately to that of the higher offices, through which only they could obtain the desired promotion.

6. We had before us, at that very time, a memorial from the members of the Bombay Civil Service complaining of the inadequacy of the salaries of the high situations under that Presidency, and of their paucity compared with other Presidencies, and praying that their position in this respect might be ameliorated.

7. We replied to the Right honourable the Governor in Council, that we considered the question submitted by him to involve the great principle, whether to employ European officers extensively in the details of administration, or to confine their agency to the duties of general control, leaving the subordinate management to be conducted chiefly by the means of natives.

8. We were quite sensible of the advantages that would for a time attend the more extensive introduction of European agency, especially in the business of land revenue administration, and we gave to the considerations urged by Mr. Williamson, the Revenue Commissioner of Bombay, and supported by the Right honourable the Governor in Council, all the weight to which they were entitled; still we were by no means prepared to decide that, circumstanced as the British nation is in India, this was the preferable course to follow, nor could we bring ourselves to abandon, for Bombay, the hope, upon which the other Presidencies are acting, that native agency could successfully be applied to this branch of internal management, and that means might be found of securing from this class the desired intelligence, integrity and zeal.

9. We promised, however, to the Right honourable the Governor in Council, that, in submitting our estimate of this year, we would forward with it copies of the correspondence that has passed, and would submit the point for your determination, should your honourable Court, yielding to the weight of authority by which the principle advocated by the Right honourable the Governor of Bombay is supported, determine to provide covenanted servants for the details of revenue administration at that Presidency: our estimate of six servants for the want of Bombay in 1840, will, of course, be insufficient, and twelve servants for some consecutive years must be provided to take the new description of duty proposed.

10. In the Secretary's note, copy of which accompanies this despatch, other points are noticed, and particularly the necessity of adjusting the assignment of servants returning from furlough to the two divisions of the Bengal Presidency; on these points, feeling competent to make provision, subject to revision by your honourable Court, in ordinary course, we do not deem it necessary to touch in this despatch. We enclose, for your information, together with our own general Statement for all three Presidencies, the separate letter and statements received by us from the Governments of Madras and Bombay, and from the Lieutenant-governor of Agra.

We have, &c.

(signed) Auckland.
A. Ross.
W. Morison.
H. Shakespear.

Fort William,
5 April 1837.

(4.)

CORRESPONDENCE.

(Referred to in page 590, Question 5240.)

Sir,
India Board, 14 February 1835.

I am directed by the Commissioners for the Affairs of India to transmit to you, for the information of the Court of Directors, a copy of the Statutes for the Government of the East India College, the same being approved by the Board and his Majesty in Council, under the provisions of the 3 & 4 Will. 4, c. 85, s. 106.

I am, &c.

Peter Auber, Esq.
(signed) Sidney Herbert.

Sir,
East India House, 24 February 1835.

I am commanded by the Court of Directors of the East India Company to acknowledge the receipt of your letter, dated the 14th instant, transmitting a copy of the Statutes for the Government of the East India College, which have been approved by the Board of Commissioners for the Affairs of India, and confirmed by his Majesty in Council, under the provisions of the Act 3 & 4 Will. 4, c. 85, s. 106.

J. C. Melvill, Esq.

3d May 1853.

With reference to the Court's resolution, forwarded to the President of the India Board, with a letter from the Chairman and Deputy Chairman, on the 12th instant, proposing the abolition of the East India College, I am commanded to state that, as it would be impossible, with the present establishment of that institution, to carry into effect some of the statutes and regulations, as now altered, it appears to the Court to be highly desirable that the altered code should remain in abeyance until the question regarding the continuance of the College has been disposed of; and I am accordingly to request that you will submit this view of the subject to the Board of Commissioners, with an expression of the hope indulged by the Court that it may meet with the Board's concurrence.

I have, &c.

The Hon. Sidney Herbert,
&c. &c. &c.

(signed) P. Auber, Secretary.

Sir, India Board, 26 February 1835.

I am directed by the Commissioners for the Affairs of India to acknowledge your letter, dated the 24th instant, in which you intimate the opinion of the Court of Directors of the East India Company, that it would be desirable that the new statutes for the government of Haileybury College, recently approved by his Majesty in Council, should remain in abeyance until the question regarding the continuance of the College has been disposed of.

In reply, I am directed to refer you to the 106th section of the Act of 3 & 4 Will. 4, c. 85, by which you will see that the statutes, having been approved by his Majesty in Council, cannot afterwards be altered or repealed, except by the Commissioners for the Affairs of India, with the approbation of his Majesty in Council.

By the above cited words, the Commissioners are not expressly prohibited from suspending the statutes; but they consider that it would not be expedient for them, even if it be lawful, to suspend by their authority statutes approved by his Majesty in Council, and that it would not be fitting now to address his Majesty in Council, praying that statutes may be altered, repealed or suspended, which his Majesty has, at their recommendation, so recently approved.

I am, &c.

Peter Auber, Esq.

(signed) Sidney Herbert.

Sir, East India House, 26 March 1835.

Doubts having arisen as to whether, under the order of his Majesty in Council, copy of which accompanied your letter of the 14th ultimo, the amended code of statutes for the Government of the East India College applies to the students now at that institution, or only to such persons as may be nominated students under the new system prescribed by the Act of the 3d & 4th Will. 4, c. 85, I am commanded by the Court of Directors to request that the subject may be brought to the notice of the Board of Commissioners for the Affairs of India, and that you will submit to the Board the opinion of the Court that it was the intention of the Legislature, that any alterations which might be made in the statutes, under the power conferred by the 106th section of the above-mentioned Act, should apply only to the students nominated under the new system.

Anticipating the concurrence of the Board in this opinion, the Court further command me to request that, should the wording of the Order in Council appear to the Board to justify the doubts above suggested, the necessary steps may be taken for suspending the operation of that order, until the arrangements under the late Act shall be carried into effect.

I have, &c.

(signed) P. Auber,
Secretary.

The Honourable Sidney Herbert.

Sir, India Board, 31 March 1835.

I am directed by the Commissioners for the Affairs of India, in answer to your letter of the 26th instant, to state that they coincide in your opinion that it was the intention of the Legislature that the statutes passed for the Government of the East India College, under the 106th section of the Act of the 3d & 4th Will. 4, c. 85, should apply only to the students nominated under the new system prescribed by the same Act.

I am further directed to request that the Court of Directors will address a petition to his Majesty in Council, praying that the Order in Council, confirming the said statutes, should be confined in its application to such students only as shall be nominated under the new system.

The Commissioners will then be prepared to take the necessary steps, in order that the prayer of the petition may be complied with.

I am, &c.

(signed) Sidney Herbert.

Peter Auber, Esq.

J. C. Melvill, Esq.

3d May 1853.

Sir, India Board, 3 August 1835.

THE Commissioners for the Affairs of India have received, in the despatch from the Governor-general in Council, dated 28th February last, No. 8, the prospective estimate which the Government are required by the 103d clause of the Act 3 & 4 Will. 4, c. 85, to frame for the guidance of the Board in certifying to the Court of Directors the number of persons to be nominated as candidates for admission into the college at Haileybury in the current year.

The same clause declares that it shall be lawful for the Board to reduce such estimate, so that the reasons for such reduction be given to the Court of Directors.

Under the power so reserved to the Board, I am directed to inform you, that in their opinion it is not advisable to make any new appointments this year.

It is intended in the next Session of Parliament to propose measures founded on the resolution passed by the Court of Directors on the 4th* of February, and it would therefore be very inexpedient to bring into operation a plan which is so soon to be modified. No inconvenience can arise from the cessation of appointments, because the Court have already provided the necessary number of writers for the year 1837; and if the residence at Haileybury be abolished, the supply for 1838 need not be settled till next year.

* (Proposing the abolition of the College.)

I am, &c.
(signed) R. GORDON.

Peter Auber, Esq

Gentlemen, India Board, 16 June 1836.

MY attention has for some time past been directed to a question which has, I am aware, been the subject of your serious deliberation, and respecting which it seems to me advisable that some definitive resolution should be formed without further delay. The opinion of the Court of Directors has been expressed on the expediency of discontinuing your establishment at Haileybury; and so far as I have been able to inform myself on the subject, those who may be supposed most competent to pronounce a judgment thereon concur in that view.

I confess that, as at present advised, I entertain a similar opinion, but I am unwilling to take any decisive step towards the abolition of the College, without being previously informed of the present wishes of the Court of Directors. You will oblige me, therefore, by bringing the subject to their notice, and by giving to me some formal intimation which may assist me in coming to a conclusion with all convenient speed.

I am, &c.

The Chairman and Deputy Chairman
of the East India Company
(signed) JOHN HOBHOUSE.

Sir, East India House, 30 June 1836.

WE have had the honour to receive and to lay before the Court of Directors of the East India Company your letter, dated the 16th inst., and we are requested, in reply, to call your attention to the communication which was addressed by the chairs to Lord Ellenborough on the 12th February 1835, conveying a "formal intimation" of the opinion of the Court of Directors regarding the East India College—to which they still adhere.

The Court are aware that, in the event of the discontinuance of that institution, the rules under which the qualifications of civil servants are thereafter to be ascertained must be simultaneously established, but if this could not now be effected in the present Session of Parliament, with the consideration due to the importance of the subject, the Court, in reference to the opinion of the Board, as expressed in Mr. Gordon's letter, dated the 3d August last, regarding the inexpediency of bringing into operation the new system for the nomination of candidates to the College, prescribed by the 3 & 4 Will. 4, c. 85, sec 103 to 107, would suggest the propriety of obtaining the authority of Parliament to suspend the operation of those enactments until the question affecting the College shall be settled.

We have, &c.

The Right hon.
Sir John C. Hobhouse, Bart., M. P.
(signed) JAs R. CARNAC.
J. LOCH.

Gentlemen, India Board, 6 July 1836.

IN your letter of June 30, relative to the East India College at Haileybury, you refer to an opinion expressed by this Board in August 1835, "as to the inexpediency of bringing into operation the new system for the nomination of candidates to the College," and you suggest the propriety of obtaining the authority of Parliament to suspend the operation of these enactments until the question affecting the College shall be settled.

I beg you to assure the Court that I shall be most happy to adopt that suggestion, if I thought that I could make such a proposal to Parliament without encountering a very serious opposition, which, at this period of the Session, would in all probability be fatal to the attempt.

J. C. Melvill, Esq.

3d May 1853.

And I beg to add, that it appears to me not at all unlikely that the object in view may be accomplished without any legislative interference.

I remain, &c.

The Chairman and Deputy Chairman, (signed) JOHN HOBHOUSE.
&c. &c. &c.

My dear Sir, India Board, 3 February 1837.

I BEG to transmit to you a draft of a Bill which it is my intention to introduce into Parliament early in the present Session. You will perceive that the enactments which it contains are not imperative, but merely permissive, and that the object is only to give us the power of carrying the fourfold system into effect, by means of a Board of Examiners, in case we should be determined to give that plan a trial. I believe that you agree with me in the opinion, from which I have not hitherto heard a dissenting voice, that the College alone would not enable us to proceed with the quadruple nominations, and that unless some other provision is made, we shall be again at a stand-still when we receive Lord Auckland's estimate from India.

The draft gives to the Court and Board the power of abolishing the College, because some doubt has been entertained whether, since the renewal of the Charter, that authority was lodged with them independently of Parliament.

I remain, &c.

Sir James Carnac, Bart., (signed) JOHN HOBHOUSE.
&c. &c. &c.

Sir, East India House, 16 February 1837.

WE have had the honour to receive and to lay before the Court of Directors of the East India Company, the draft of the Bill which you have been so good as to send to us regarding the examination and qualification of candidates for the Civil Service of India, and we are requested to state the Court's concurrence in the proposed Bill.

We have, &c.

(signed) JAMES R. CARNAC.
JOHN LOCH.

The Right hon.
Sir John Hobhouse, Bart., M.P.,
&c. &c. &c.

Gentlemen, India Board, 7 April 1837.

I HAVE the honour to transmit to you, for the consideration of the Court of Directors of the East India Company, a copy of a Bill, which I have introduced into the House of Commons, to authorise the Commissioners for the Affairs of India to suspend the subsisting enactments concerning the fourfold system of nomination of candidates for the East India Company's College at Haileybury, and for providing, during such suspension, for the examination of candidates for the said College.

I have, &c.

The Chairman and Deputy Chairman (signed) JOHN HOBHOUSE.
of the East India Company.

Sir, East India House, 19 July 1837.

I AM commanded by the Court of Directors of the East India Company to acquaint you, in reference to the Act of Parliament which has lately passed, that the Court propose, subject to the concurrence of the Board of Commissioners, that the fourfold system of nomination of candidates for the Company's College at Haileybury shall be suspended.

In the event of this proposition meeting with the Board's approbation, the Court request that the Board, under the authority given to them by the Act, will be pleased, without delay, to name Examiners, and to prescribe rules for their guidance, in order that candidates for admission at the ensuing opening of the College, on the 26th instant, may be examined accordingly.

I have, &c.

Robert Gordon, Esq. (signed) JAMES C. MELVILL, Secretary.

Sir, India Board, 25 July 1839.

IN reply to your letter of the 19th of this month, I am directed by the Commissioners for the Affairs of India to communicate to you their acquiescence in the proposal of the Court of Directors of the East India Company, that the fourfold system of nomination of candidates for the College of Haileybury shall be suspended.

I am, &c.

James C. Melvill, Esq. (signed) WILLIAM CABELL.

Die Jovis, 5° *Maii* 1853.

LORDS PRESENT:

The LORD PRESIDENT.	Lord MONT-EAGLE.
Earl of ALBEMARLE.	Lord WHARNCLIFFE.
Earl of HARROWBY.	Lord WYNFORD.
Earl of ELLENBOROUGH.	Lord STANLEY of Alderley.
Lord ELPHINSTONE.	Lord BROUGHTON.

THE LORD PRESIDENT in the Chair

Evidence on the Government of Indian Territories.

J. P. Wise, Esq.

5th May 1853.

JOSHUA PATRICK WISE, Esquire, is called in, and examined as follows:

5244. *Chairman.*] WILL you state to the Committee how long you have resided in India?
I have been 28 years in India.

5245. In what part of India?
In the Zillah of Dacca all the time.

5246. You have had property there?
I have been extensively engaged in the indigo cultivation, and in landed property, in charge of large estates in that neighbourhood.

5247. Earl of *Ellenborough.*] Have you had anything to do with the cultivation of cotton?
I have seen a good deal of cotton in the Tippera district.

5248. *Chairman.*] Are there many Europeans, like yourself, who have bought land in that part of the country?
There are not many in the Dacca district; there are two or three others, but not so extensive. I have about 50 factories, which are scattered over four districts, a distance of about 300 miles in extent.

5249. Are there any legal difficulties which disincline persons to purchase land in that part of the country?
There are difficulties.

5250. Is any person purchasing land liable to much litigation?
He is subject to constant litigation. No person can have landed property in India without more or less being forced into litigation. There are very often suits brought against you; even in the case of estates purchased at Government sales, you have suits brought.

5251. Lord *Broughton.*] As to the validity of the tenure of the land?
Yes, as to the tenure of the land.

5252. *Chairman.*] In conducting those lawsuits, is the owner subject to much difficulty in the way of evidence?
Very much. The evidence is generally in India almost all false, both the documentary and the oral evidence; and the Judges are obliged, of course, to go with the evidence laid before them, either documentary or orally given; so that he has great difficulty to contend with.

5253. Lord *Mont-Eagle.*] Do suits often arise from the boundaries being undefined?
Yes; the boundaries are undefined, and the natives get up all kinds of cases.

They

J. P. Wise, Esq.

5th May 1853.

They even antedate papers, and all kinds of frauds are got up; and therefore it is very difficult for Europeans safely to own property.

5254. Lord *Broughton.*] Are they at all affected by the Resumption Regulations?

The Resumption Regulations were the greatest blight and curse that the Government of India ever inflicted upon the country.

5255. Do you mean with reference to land taken by indigo planters?

With reference to all landed property in Bengal. It has covered the whole country with forgery and perjury, by making it necessary for every man to produce measurement papers and documents; by setting aside the laws of 1793, and compelling people to prove their right to property for 70 years back, a thing quite impossible to do. This law put in practice immediately set every man to work to fabricate papers, because it was imperative upon the Judge to decide in favour of the Government, unless you could prove by documents that the property had belonged to you 60 or 70 years.

5256. Are you speaking of the district with which you are more peculiarly acquainted, or from what you have heard with respect to the Resumption Laws in other parts of India?

I saw how the law affected myself and neighbourhood chiefly; but of course I have heard a great deal of its effects in other parts of the country.

5257. Earl of *Ellenborough.*] Had it not very much the effect of shaking the confidence which the people formerly possessed in the Government?

Completely.

5258. Lord *Wynford.*] Then it is the difficulty of ascertaining the tenure, not the fear of being under this mixed law, that prevents Europeans from settling in the country?

There is no law; and the issue of a suit is a matter of great uncertainty.

5259. *Chairman.*] Are there any other causes which tend to prevent Europeans from purchasing land?

The magisterial powers are the great difficulty to Europeans: the Magistrates are generally young men; they are poorly paid; and when they have become sufficiently experienced for performing satisfactorily the magisterial duties, they are made Collectors; and having reached that position, and become really useful and efficient, they are transferred to another district as Collectors.

5260. Earl of *Ellenborough.*] While you are absent from India, what provision have you made for the regular payment of your kists to the Government?

I left an agent in India, who conducts my affairs there, and he pays the Government revenue. I have large estates, and had no necessity for any particular arrangement for meeting the Government dues.

5261. But if your agent fell ill, or if he behaved fraudulently towards you, and failed in the regular payment of the kists, your lands would all be sold by public auction?

Immediately the instalment was due.

5262. After a delay of three weeks, or some short time?

There are certain fixed days; there are four dates in the year. The Government have done very essential benefit to the country in that respect; formerly it was uncertain when you would be called upon to pay the Government revenue; interest was charged if it was not paid with due regularity, and it was at the option of the Court servants to take more or less, and involve the party in difficulties in the accounts; but that has been all removed by the Government fixing four dates of payment; so that a man having 100 rupees to pay a year has 25 to pay at each time, and he knows the time. Since that law has been introduced, fewer estates have been sold; but, of course, if I should not pay my instalment, I cannot do so the next, and after an advertisement of 30 days, the property is sold.

5263. *Chairman.*] Practically, would the property be sold if the agent was to delay beyond that time?

Yes; if he was to fail an hour, it would be sold.

J. P. *Wise*, Esq.

5th May 1853.

5264. Lord *Mont-Eagle.*] Do you mean that it would be sold for one instalment in arrear?
For one instalment it would be sold.

5265. Is it put up to public auction?
It is put up to public auction.

5266. And there is no fixed price at which it must sell?
No; the only restriction is, that the Government bid up as far as the Government have a claim; after that, of course it is left to others.

5267. Do you mean that the estate might fetch only the amount of one instalment of rent?
I have known many estates, and valuable estates, sold for one rupee to the Government; no bidders.

5268. Earl of *Ellenborough.*] How many places are there within the zillah at which the rents are received?
The rents are received only in the Collector's office.

5269. What distance may that be from the residence of the persons who have to pay the rent?
Sometimes 50 or 60 miles.

5270. Do they pay all the rent in solid coin?
Yes.

5271. They all have to pay certain sums of rupees at that one place, and at the same time?
Yes; all at one place, and at the same time.

5272. And exposed to dacoitees and thuggees on their way there?
Yes; thuggee has, I think, been pretty well put down; there used to be a great deal of it; a great many people going to different places disappeared, and never were found.

5273. When it is known that a great many persons are travelling to the same place at the same time, with money about them, is there not a great deal of insecurity?
People are robbed: there are many robberies which are not brought to the knowledge of the Magistrates.

5274. When a person arrives at the Collector's office to pay his rent, is he able to do it, and on the same day to commence his return home?
He is sometimes obliged to remain till the second day; that is no great hardship to a native: he is fond of coming to the zillah station; and a day to him is of very little importance.

5275. How did you purchase the various estates that you have?
I purchased them at various times, partly at public auction, and partly by private purchase. I was, I believe, the first European that purchased land in India before the law was changed to admit Europeans: I made application to the Government, and, as the law was then in process of formation, I was permitted to hold it; I did not, however, hold it, because the sale was afterwards upset, and I lost the property.

5276. Do you cultivate indigo and other things partly upon your own lands?
Partly, and partly upon the property of other zemindars.

5277. Do you purchase indigo and other articles?
I advance money to the ryots who grow the indigo, and sell it to me; and I also cultivate indigo in the usual way; hiring ploughs, and keeping servants.

5278. Which do you find the most profitable mode of proceeding?
The most satisfactory way is to cultivate for yourself, because then, whatever is gained, you get it; whereas if you advance to the ryots, you are often disappointed—if a failure of the crop, they are unable to pay, and have heavy arrears: they are very improvident, and it is very difficult to induce them to cultivate better land, or to adopt higher cultivation.

J. P. Wise, Esq.

5th May 1853.

5279. Lord *Broughton*.] You say that your purchase of land was upset?
Yes.

5280. Was that decision made by any special Commission?
No; it went before the Sudder Board of Revenue.

5281. Lord *Wynford*.] After the sale was upset, did you gain any satisfaction for the money which you had paid for the estate?
No, none whatever; I was very much disappointed: the Government purchased the property themselves afterwards, and now hold it.

5282. Earl of *Ellenborough*.] Do you find, in many cases, that the native has sold the same crop to you and to others also?
No: we have no competition in my neighbourhood; but that often happens in other districts where there are a number of Europeans and Natives carrying on the cultivation of Indigo.

5283. *Chairman*.] You spoke of the powers of the Magistrates; are their powers very great?
I consider that the Magistrate ought to be the best man for the benefit of the whole community: upon him and upon his power rest the comfort and happiness of the whole district.

5284. What is the pay of the Magistrate?
His pay is only 900 rupees a month; it has been reduced. Formerly he used to be a Judge and Magistrate, a gentleman of high standing and great judgment and experience; and he had his assistant under him: and, I think, things were then conducted in a manner much more satisfactory to the people. The present system is to have a young man, who remains a few years at most; and when he has become well acquainted with the district and with the duties of the office, he is removed—very often, if a good man, much to the injury of the district.

5285. What is the amount of the powers which the Magistrate has?
He has unlimited power to do good, or the reverse.

5286. On the exercise of that power does the security of life and property in his district very much depend?
I think so. I have seen a district in the very highest state of discipline, and everything comfortable, under a good Magistrate; and I have seen the same district put into the very opposite state in the course of a few weeks by a bad Magistrate coming in his place. It is immediately known to the natives: they are very quick in discerning character.

5287. Earl of *Ellenborough*.] Are not they remarkably clever in finding out immediately what a man is who is placed over them?
Yes: I have been told by a native, after seeing a man for a day in the office, what he is capable of. When a Magistrate gets the name of being a good Magistrate, which he very soon does, if he is so, it is astonishing what reformation he causes in a few days; I speak as an indigo planter; it is the greatest blessing to me when we have a good Magistrate: our own servants are upon their guard; corruption decreases, thieving ceases, and dacoitees seldom heard of.

5288. *Chairman*.] How would you propose to remedy the evils you complain of in this respect?
I would reverse the present practice; I would give the superior officer the larger amount of pay as a Magistrate, and make the Collector the inferior officer. The Collector has very little to do; his office is a very simple one; he has nothing to do compared with the Magistrate.

5289. Lord *Wynford*.] Has not he other duties to discharge besides receiving the revenue?
He has other duties, but they are of a trifling character compared with those of a Magistrate.

5290. Has he not the arranging of all the disputes that take place in his district?
No; the Collector has very little to do in these matters.

5291. Does

J. P. Wise, Esq.

th May 1853.

5291. Does he undertake the repression of crime?
No; he has nothing to do with that.

5292. Lord *Mont-Eagle.*] Has not he to hear all appeals upon the subject of claims to the revenue?
He has.

5293. Is not that going on every day in the year?
Yes; but it is really nothing compared with the Magistrate's duty. The Commissioner of Revenue, who is generally the very best officer in the district, has little power over the police; the Superintendent of Police has the whole power over the Magistrate; he directs all matters connected with the Magistrate and police; he is generally at a distance, and knows but little about it, and from that circumstance often does harm. The very best man for the improvement of the district, and for superintending police affairs, &c., is the Commissioner of Revenue, but he has at present nothing to do with it.

5294. Your remarks apply chiefly to the permanent settlement district?
Entirely to Bengal.

5295. In other parts, would not the Collector have a great deal more to do with it?
Yes, in the districts not permanently settled.

5296. *Chairman.*] Has the Commissioner of Revenue now as much to do as he can get through?
No, he has not a great deal to do.

5297. What functions would you propose to give him to discharge, in addition to those which he now discharges?
The duties of the sessions; the trial of criminals might devolve upon him. I think I shall better explain my meaning if I state the circumstances of Dacca. The Zillah Judge of Dacca has another district, where he goes and holds sessions four times a year; he is absent at least a month each time on that duty. It is a very extensive district, with powerful landed proprietors, and numerous indigo planters; it is a very populous zillah; and, as he goes to hold the sessions four times a year, of course, during these four months, he is removed from his duties at Dacca; then, if you take the Sundays throughout the year, and the holidays, amounting to some 60 or 70; and then, if you take also the time for miscellaneous duties in Dacca, and his session duties in Dacca, there will remain little time for looking after the Moonsiffs and the Sudder Amins, and deciding cases himself; in short, he has scarcely a day in a month to spare; he is overwhelmed with business.

5298. You think that part of those duties might be discharged by the Commissioner of Revenue?
Yes; the Commissioner of Revenue might discharge a part of those duties.

5299. Earl of *Ellenborough.*] Have the Deputy Magistrates been of use?
The Deputy Magistrates have been of use; I do not think the native Deputy Magistrates are good; they greatly want courage and activity; they are generally lazy and prejudiced, and I think they have not answered so well as good Europeans.

5300. What class of men are the Deputy Magistrates when they are Europeans; they are uncovenanted?
They are.

5301. Whence do they come?
They are selected from various classes of people; I think military men would make very useful Magistrates, and they might go back to their corps when necessity required it.

5302. If they have been good regimental officers, they know more of the people than the others do?
Yes; and it would also give rise to a useful spirit of emulation.

5303. And of the best part of the people?
Yes; I have known several very excellent Magistrates military men.

J. P. Wise, Esq.

5th May 1853.

5304. What are the vices of the police system?

The corruption is the great evil, and false evidence in every shape and kind.

5305. *Chairman.*] Do you suffer much in the course of a year from depredations?

No, very little; it is seldom that a European suffers in that way; on the contrary, I can mention from experience having sent frequently to different parts of the country 5,000 and 10,000 rupees in bags, and I never lost a rupee; but, at the same time, I know that no native could do that.

5306. Do you think the police would be improved if something of a military character were given to it; if it were placed under military officers, and non-commissioned officers of the army were brought to act as jemadars and soubahdars?

Those officers, I think, would make very good Magistrates; but with respect to the jemadars and soubahdars, I am not sufficiently acquainted with the lower orders of native officers, to say how far they would work with the natives; it requires great experience and tact and ability to get proper work out of the native police; I think the Magistrate himself, and the Deputy Magistrate, if he is an able man, can do so.

5307. The question did not assume that the soubahdars and jemadars were to be Europeans also, but that those non-commissioned native officers shall be taken from the native corps, and placed in situations of authority in the police, which are now held by natives?

I am not sufficiently acquainted with the native military to be able to state exactly whether that would answer.

5308. *Chairman.*] The subaltern native officers referred to in the last question come chiefly from another part of the country; would they be able to discharge the duties of police well in Bengal?

I am so little acquainted with the native officers, that I am not able to answer that question; and I fear they would not.

5309. Earl of *Ellenborough.*] You have not seen much of the military in Dacca?

No; there is always a regiment in Dacca, but I have not seen much of them.

5310. Are the lines at Dacca extremely unhealthy?

They have become so in recent years, and also Dacca itself. It was formerly a very large place, with perhaps 200,000 or 300,000 inhabitants; now it is reduced to 30,000 or 40,000. The old tanks are filled up; they are not cleaned out; there is no drainage, and no attention is paid to keeping away jungle; and malaria is increasing, and fever and ague.

5311. They are in the immediate vicinity of the lines?

Yes; malaria tanks and jungle, very close to the lines.

5312. Was not the mortality which took place recently with the 38th regiment there almost unprecedented?

I do not think the mortality was so great; there was a great deal of sickness; a low intermittent fever attacked the sepoys and prostrated their strength, which required a year or two years' absence to go to their homes before they became strong again.

5313. Lord *Elphinstone.*] Are the natives of Dacca subject to this fever as well as the sepoys who come from a distance?

Yes.

5814. Lord *Broughton.*] Have those diseases been more frequent since the depopulation of Dacca?

It is more recently, I think, and more on account of the want of drainage and want of cleanliness, and the want of keeping open roads and streets, as well as the encroachment of the jungle all around Dacca.

5315. Has not the decrease of population been entirely owing to the falling off of the Dacca muslin manufacture?

Yes, partly from that.

5316. Lord *Elphinstone.*] Dacca was a great manufacturing town formerly?
Yes.

5317. And now the manufactures have almost fallen to nothing?
They are very small indeed. Fine muslin is still manufactured, and there is still a great deal of cloth made up; but English cloth has taken very much the place of Dacca. Cotton-twist is sent out from this country to Dacca, and the weavers are weaving it; but the cloth is not considered so soft and durable as the cloth made out of their own twist, which is soft, silky, and very strong.

5318. Earl of *Ellenborough.*] Were you ever engaged in the cultivation of cotton?
No, I never cultivated cotton. I have had it in my garden in a small way, and it has proved most productive; and I see no reason why it should not succeed in India.

5319. Have you sent home, as a matter of curiosity, any of that cotton which you cultivated in your garden for sale in this country?
I sent it home, and it has been very highly approved of; I have had the opinion of the best judges upon it. I have sent home, also, cotton of the Tippera district. I was a long time agent for the Rajah of Tippera, and I was brought into communication with his independent territory, in which I saw a great deal of the cultivation of cotton. The people there are very poor; the hills are covered with bamboos; the people move about for the benefit of fresh soil; after being three or four years located in one place, they move to a new locality, cut down the bamboos, burn them when dry, and after the first shower of rain in the spring they plant the cotton, and with it rice and other things, such as melons, and reap them all as they ripen. The quantity of clean cotton that comes out of that country is about 2,000,000 pounds, and of course it could be extended very considerably. An improved kind of cotton might be grown there; I have sent it home, and it has been approved of as fine and strong, but it is short in the staple and very woolly; it must be mixed with other kinds to answer.

5320. What price does it fetch?
There it fetches about 1½ *d.* a pound clean; in the neighbourhood of Dacca, it is about 3¼ *d.* a pound.

5321. Lord *Stanley* of Alderley.] Can you state what it would fetch in England?
I do not know what that quality of cotton would fetch in England; I believe the Indian price mentioned, 3¼ *d.*, is high for such cotton.

5322. Earl of *Ellenborough.*] The high price cotton is the Dacca cotton, which fetches 3½ *d.* a pound at Dacca?
Yes.

5323. That is a long cotton, and the Tippera cotton is short and woolly?
Yes.

5324. Did you sell any of the cotton that you cultivated yourself?
No; it was only on a small scale.

5325. Did you ascertain what it is worth in the market here?
I forget; I sent it home, and I do not recollect anything further, except that it was declared to be of good quality.

5326. How is the Tippera cotton cleaned?
They clean it with a cherk, a little native machine, which is very rude; but it is very difficult to clean the cotton; it adheres too tenaciously to the seed.

5327. Does there appear to be a great deal of dust and seeds in it?
There is a good deal of seed in it; in weight, I think two-thirds of seed; the natives are very careless in reaping, and there is a great deal of leaf in it.

5328. Was it very strongly pressed before it was sent home in the bales?
No, I am not aware that it was strongly pressed.

5329. Was not a screw used for the purpose of pressing it?
It is all screwed before it is sent home, but that which I sent home in small quantities I did not screw.

J. P. Wise, Esq.

5th May 1853.

5330. Is there as much cotton cultivated now, in the neighbourhood of Dacca, as there was formerly?

No; the cultivation of cotton is very small now.

5331. Did you ever compare Dacca cotton and Tippera cotton with cotton from other parts of India?

Yes.

5332. Which is the superior of the two?

The Tippera is inferior, it is a rough, woolly kind of cotton; but the report that I had of it was, its being very strong in texture, and answering remarkably well when mixed with other cotton.

5333. But the Dacca cotton is very soft, is not it?

Yes, that which is grown in the immediate neighbourhood of Dacca.

5334. Are there not establishments in the neighbourhood of Dacca for the purpose of cultivating and cleaning cotton?

The Government had a gentleman there some years; he was sent away from Dacca two years ago, to go up to Assam; but he has been unsuccessful there also.

5335. Was he an American, or was he an Englishman?

An Englishman.

5336. Do you recollect his name?

Price.

5337. Lord *Stanley* of Alderley.] To what do you attribute that failure?

There seemed to be always something coming in his way; a blight, or a storm, or something or other; that is not the way to produce cotton; the natives must grow it; they must be assisted, compelled, and induced to grow it, till they find their advantage; and when they find it profitable, they will be able to grow a large supply of cotton.

5338. Earl of *Harrowby*.] How would you compel them to do it?

By advances, so as to make it advantageous to them; they have other crops now, which are more productive, rice and other things, which give them all that they require; and the native of India is so very improvident a creature, that if he gets enough to live upon, he is little disposed to work or extend his cultivation.

5339. But he will grow sugar?

Yes; that is more productive; they eat it, and use it in various ways as sweetmeats.

5340. Earl of *Ellenborough*.] Did you take particular pains with the cultivation of the cotton which you cultivated in your garden?

No; there was no particular attention paid to it; it was foreign cotton I got up there; it was American cotton which I planted, and it remained there for six or seven years; I often used to take Mr. Price and show it to him; the quantity of cotton we got from it was immense.

5341. Do you think that American cotton succeeds as well in India as Indian cotton?

That succeeded remarkably well.

5342. Was it equal to the original Dacca cotton?

No; I have compared the original Dacca cotton with Mr. Price's, and grown from foreign seed; he was very much pleased with the indigenous.

5343. The Dacca was superior to his cotton?

Yes; that is the cotton that they grow for the fine muslins.

5344. Do you think any advantage would arise from establishing near each kutchery a small farm, just for the purpose of showing the natives how to cultivate cotton, and having one of the improved machines there to show how it could be cleaned, and offering to clean at a low price any cotton that might be brought there for the purpose?

I think it is one peculiarity about the cultivation of cotton, that the native can plant it out close to his house, and have an acre or a quarter of an acre,

or

J. P. Wise, Esq.

5th May 1853.

or any small portion of ground planted with cotton; and he will cultivate it as well as it would be by any improved system that you could show him.

5345. Did you observe how Mr. Price cultivated his?
Yes.

5346. Was there not a difference between his mode and that of the natives?
Yes; but the natives are excellent cultivators.

5347. Lord *Stanley* of Alderley.] Do you think that the principal circumstance which has retarded the growth of cotton by the natives is, that they have found the cultivation of other crops more profitable?
Yes; and their disinclination to go out of their way for any profit unless it is actually forced upon them: at present, as long as their actual wants are satisfied, they do not care much for anything beyond that.

5348. Do you think that if facilities were given them, and if there were a good market for the sale of the cotton they produce, they would be disposed to turn their attention to the cultivation of that crop?
I think so.

5349. Lord *Harrowby*.] They have taken to the cultivation of indigo under the system of advances?
Yes; it has been forced upon them on many occasions, and is profitable.

5350. They have found it to their advantage to pursue that system?
They have.

5351. Then it is only the want of a similar advantage in the case of cotton which has prevented Europeans from making the same advances on account of cotton?
Yes.

5352. Lord *Stanley* of Alderley.] Why should not it be equally profitable to Europeans to adopt the same system with regard to the cultivation of cotton that they have adopted with regard to the cultivation of indigo?
The profit upon cotton is not so great as that upon indigo.

5353. *Chairman*.] You stated that you had encouraged the growth of a large amount of indigo by making advances to the ryots, but that there was frequently great disappointment and loss attending upon those proceedings, and that the advances so made were sometimes not repaid; do you think that upon the whole the natives who have availed themselves of the advances made in that manner by Europeans for the growth of any particular thing, whether cotton or indigo, have ultimately found themselves in a better position than those who have had no such assistance, and who have therefore simply cultivated the crops which they thought would be the most productive?
They ought to be in an improved state, and they generally are so; those districts where Europeans are settled are generally in a better state, and much more independent than in the districts where they have not these advantages.

5354. Lord *Wynford*.] Is there not a large export of cotton to China and the Straits?
There is, chiefly from Bombay.

5355. Does not that arise from the better price which they can obtain there for their cotton than they can in this country?
Yes, for inferior cotton.

5356. *Chairman*.] Are there any legal difficulties which tend to discourage the growth of cotton in India?
No, I am not aware of any legal difficulties, excepting the unfavourable way the law bears on European settlers generally.

5357. Lord *Stanley* of Alderley.] Supposing it to be a great object to encourage the cultivation of cotton in India, have you any suggestions to make as to the best mode to be adopted, with a view of inducing the natives to grow a larger quantity of cotton than they do at present?
In Western India and in Central India, where cotton is more generally grown, there are great difficulties, I believe, in getting it to a market; from

J. P. Wise, Esq.

5th May 1853.

Central India they have a great distance to bring it up to Mirzapoor. In the Western Provinces they have a distance to go of, I fancy, about six weeks and two months, carrying it upon hackeries over very bad roads; in fact, no roads at all: it is carried upon bullocks, and the expense is very great. The people in that part of the country have no ready market for it, and, of course, the people that go and purchase it there must purchase it at a very reasonable rate, in order to pay for this long and expensive land carriage. That is the great difficulty that they have, and that makes the cultivation of cotton in those parts of the country very difficult: and the want of irrigation is also much felt; the soil is good, plenty of heat, and irrigation in due season, with a good ready market, is all that is required to make India a large cotton growing country.

5358. *Chairman*] Your own district has great facilities of carriage by water?
Yes; there is very little cotton there, but the carriage by water, of course, is very simple.

5359. Earl of *Ellenborough.*] The seasons are regular in that neighbourhood?
They are regular.

5360. Is not that considered a very great advantage in cotton cultivation?
It is very desirable. Irrigation is very much wanted where you have a very dry soil; in the Dacca district we have not a very dry soil; the land is generally moist; it is low, and well suited for cotton.

5361. Is not regularity in the seasons considered of much more importance than anything else in the cultivation of cotton?
I believe so.

5362. Lord *Wharncliffe.*] Do you consider that the land-tax has any operation in obstructing the cultivation of cotton?
Not in the part of the country where I am—where the permanent settlement is.

5363. Earl of *Harrowby.*] With the facilities of conveyance in the neighbourhood of Dacca, the merchant can afford to give a better price for the cotton than he can in the interior parts of India?
Yes.

5364. But in spite of that, there is no great extension of the cultivation there?
No.

5365. Are the people of that neighbourhood a particularly disheartened and down-spirited people, and less inclined to improvement than in other parts of India?
I fancy every Bengalee is pretty much the same.

5366. Are they less enterprising than the rest of the natives of India?
Yes.

5367. Yet they have been led, by the system of advances, to undertake the growth of indigo?
Yes.

5368. Lord *Elphinstone.*] And more than anywhere else: there is no indigo grown in Bombay?
No. In Madras it has increased very much in the last ten years; it has increased from a very few thousands up to 10,000 or 15,000 maunds.

5369. Earl of *Ellenborough.*] Have not the indigo planters in India a monopoly of the supply of all the world?
They supply largely, but not on monopoly.

5370. The growth of sugar has increased very much, has it not?
The growth of sugar is very extensive in Bengal. The natives consider a little sugar a great luxury, and it is grown to a very great extent: it could be shipped to England in immense quantities, if required. That was shown a few years ago, when there came a demand for it; from a few thousand tons it went up, I believe, to 120,000 tons.

5371. It was a question of price; how much should be withdrawn from home consumption?

Yes;

Yes; it was hardly felt in Bengal; it was merely a small advance of price which brought it out.

5372. Lord *Mont-Eagle.*] Is it manufactured by each cultivator for himself?
Yes, in small quantities.

5373. Without any machinery?
He has a very rude way of doing it.

5374. Lord *Elphinstone.*] Has the export declined?
Of late years there has not been so much coming home.

5375. Owing to the fall in the price?
Yes.

5376. *Chairman.*] What is your opinion of the aptitude of the natives for the judicial offices which they hold?
They are very well adapted, I think, for judicial offices; they are very clever and very intelligent, and some of them are well-educated, and they do well when they are well looked after by the Judge; that I think is a great thing in the present state of the native Judicial Service. I think a good deal depends upon his looking well after them.

5377. They are looked after by the Judge whom you describe as having no time to spare?
He has not sufficient time to overlook the number of judicial officers under him.

5378. What are their principal deficiencies as Judges?
I cannot say that I think they are corrupt; I do not think so, from what I have observed; they are more influenced by other feelings, either for or against, which sometimes lead them astray; but they are capable of being improved.

5379. You mean that they are influenced by feelings of favouritism?
Yes, or the reverse.

5380. Have they any other prejudices which influence them?
They are influenced by prejudices of caste, one against another; I have seen a Principal Sudder Amin having a bad feeling towards a Moonsiff whose appeals came up to him, and he invariably sent every case back again, right or wrong. I have seen a judicial officer who pretended to be not in very good health, and who was a little aged (I speak of cases that come to my own knowledge), and not attending to his kutchery regularly. I have known that man not go to his office till close upon the end of the month; and then, in order to avoid being reported to the Sudder, decide off half a dozen cases in the course of as many hours; I have heard the vakeels complain that it was a toss-up who would lose or gain the case.

5381. What office did the Judge hold?
He was Chief Sudder Amin.

5382. Earl of *Harrowby.*] There is not much public opinion in the Mofussil to control the conduct of those Judges?
That is the great defect; we have no public feeling; it is not as in this country, where, if a man is a rogue, or guilty of any fraud, he becomes a marked man. He is considered amongst the natives of India a very clever fellow if he can commit any fraud or villany and get off with impunity.

5383. *Chairman.*] What is your opinion of the conduct of the native officers in the Courts of the European Judges?
The officers in the Courts of the European Judges are generally corrupt—very crafty.

5384. Earl of *Ellenborough.*] Has not the native officer of the European Judge a great deal to do with the selection of the persons who are to act as policemen?
Of course; the head native officer generally, with a young Magistrate, has the whole power in his hands.

J. P. Wise, Esq.

5th May 1853.

5385. That very person being one who is not to be trusted?
Yes.

5386. *Chairman.*] Can that evil be much checked by the fact of the Judge being a really able and well-trained man?
There is no doubt that with an able Judge and an able Magistrate corruption will cease to a certain extent. The natives know as well as possible whether a Judge is up to his work, and, if he is, they seldom think it necessary to pay the amlah, the native officer.

5387. Do you consider the European Judges generally sufficiently trained for the business they have to transact?
There are very able men in the Judicial Courts; but there are, of course, a number of them that are without judicial experience, who have come in there to sit upon the Bench, without having judicial training and knowledge.

5388. Earl of *Ellenborough.*] Does not the ability of a Judge in India depend more upon his natural qualifications than upon a knowledge of law?
I think it does. A man of good common sense, patience and good health, knowledge of the language, and activity, will get through his work satisfactorily to every one. I am not an advocate for the refinements of the English law.

5389. *Chairman.*] Do you think the co-operation of the natives as juries could be more extensively brought into play for the assistance of the Judge?
The system of assessors and juries has been introduced by enactments, and is sometimes made use of; and I am astonished that it is not more used, because it would very greatly ease the Judge; but it so happens that the jury may be for acquitting, and the Judge proceed to sentence to heavy punishment; he is not obliged to go by their verdict.

5390. The jury is more for the assistance of the Judge than for the protection of the criminal?
Yes, merely as assessors.

5391. Would not the jury have a much greater facility in weighing the evidence than the Judge?
A well-qualified jury will do so.

5392. And you think they may be depended upon?
Taking proper men.

5393. Earl of *Ellenborough.*] How are the assessors selected?
I do not think they have selected them according to social standing or property qualification, or in any particular way; but there ought to be some proper selection made of them.

5394. Does the Judge select them?
He does.

5395. Lord *Elphinstone.*] Would not the same defects which you have described as being exhibited by the native Judges, namely, partiality and favouritism, also disqualify the natives for acting as jurors?
It would in some degree; you cannot get perfection.

5396. Earl of *Ellenborough.*] You have a great many Mahomedans about Dacca?
In the city of Dacca there are a very large number of Mahomedans. I think the population are half Mahomedans and half Hindoos.

5397. Which class do you think the superior?
I like the Hindoos the best in every respect; I think they are better cultivators, better men of business, more manageable, more temperate, and well disposed.

5398. *Chairman.*] Are they as much to be depended upon as the Mahomedans?
I think so.

5399. Earl of *Harrowby.*] As truthful?
Yes; in Western India I have heard it is the reverse.

J. P. Wise, Esq.

5th May, 1853.

5400. *Chairman.*] Have you turned your attention at all to what would be desirable with regard to the higher Courts: it has been suggested that there might be an amalgamation between the Supreme Court and the Sudder Court; would that, in your opinion, be desirable or not?

Possibly it might be of advantage to have one Judge of the Supreme Court to assist the Judges of the Sudder in their proceedings; it might be useful, I should fancy.

5401. Lord *Broughton.*] Or one of the Judges of the Sudder to assist the Supreme Court?

I think the general feeling of most Europeans is, that they would rather have their cases tried by the Sudder Dewanny than by the Supreme Court. It is less expensive, and it may be more speedy, perhaps, particularly of late years, when they have been getting through a great deal more work than formerly; there are not the arrears there used to be.

5402. *Chairman.*] In general, is the administration of justice as speedy and as cheap as it ought to be?

It is very expensive, at the very commencement of lawsuits, in stamps alone and fees, which are very high; the stamp-tax varies according to the amount of the case; but in some cases the expense is perhaps 20 per cent.

5403. Lord *Wynford.*] It has been stated that the fear of the Supreme Court has sometimes prevented Magistrates from acting so actively as they ought to do?

It has, I think, operated favourably.

5404. Has that come within your knowledge?

Yes. The Magistrates have been protected by recent enactment for any act done by them: you have no redress; you cannot proceed against them: of course that gives them a further impunity. I do not think the Magistrates, generally, are well-disposed towards the settling or independence of Europeans in the districts.

5405. Earl of *Albemarle.*] To what do you attribute that?

There are illegal acts done by Magistrates that Europeans, of course, have their eyes upon, and that they would not submit to; the Magistrates would rather have them out of the way.

5406. It is a sort of surveillance that they are afraid of?

Yes.

5407. Lord *Wynford.*] We were given to understand by one witness that this surveillance of the Supreme Court is to some extent an impediment in the way of the Magistrates acting as their duty and conscience suggest; do you think that is the case?

I do not think that is the case. A Magistrate has great power over every European residing in the district; he is a Justice of the Peace; he has power to fine to the extent of 50 *l.*, and to put him under recognizance without even an affidavit being sworn. I have known men put under such illegal recognizance, and so fined.

5408. But there is the fear of being brought into the Supreme Court?

Yes; but any redress is expensive.

5409. Lord *Elphinstone.*] Are there any natives in the neighbourhood of Dacca who have property within the limits of the Supreme Court at Calcutta?

Yes, there must be.

5410. It has been stated to the Committee, that sometimes natives, who are so circumstanced, are able to set the European Magistrate at defiance, and to threaten him with prosecution in the Supreme Court?

I am not aware of that; on the contrary, I have known instances of natives, who had property in the neighbourhood of Furreedpore, being brought from Calcutta to attend in the Magistrate's cutcherry, because of some dispute that had taken place with respect to the property; the man was residing in Calcutta, and had nothing to do with the dispute.

5411. Can you bring a man from out of the jurisdiction of the Supreme Court without an order from the Supreme Court?

J. P. Wise, Esq.

5th May 1853.

He was brought from under the jurisdiction of the Supreme Court. I have known an instance of that within the last two years; it may have been done by an order got through the Supreme Court.

5412. Earl of *Ellenborough.*] Was not a large sum left eight or ten years ago, for the benefit of the people of Dacca, by some European?

There was a large sum left, but it has never been got; we have been looking for it for the last dozen years; it was left by a Mr. Mitford. We understood it was about 70,000 *l.* Shortly before I left Dacca, intimation was given by the Government that a lac of rupees, 10,000 *l.*, had been got, and that it was available when the Commissioner could point out how it could properly be laid out; but none of the money has been yet laid out, which is much to be regretted.

5413. Who would have to lay it out?

The Commissioner was written to upon the subject to ascertain among the natives what they thought would be the best way to lay it out, and there were various proposals made for building a hospital, and for clearing the town, and different things of that sort.

5414. Where is the money all this time?

It was in Chancery, here; there were two lawsuits about it; no accounts have ever been got in Dacca how it was spent; but it has been frittered away; and the seven lacs have been reduced down to one.

5415. Earl of *Harrowby.*] Do the Europeans prize very highly their exemption from the Mofussil tribunals?

The Europeans are very much afraid of the Mofussil tribunals; it seems to be the bugbear of the service, the desire of bringing Europeans under them in every way; but it appears to me that the Magistrate has already great power over every European; he has the power of sending for him, and requiring his attendance, and fining him and putting him under heavy recognizance, and, in the event of any serious matter, of sending him to the Supreme Court; but that power has been very little required; I think that, within the last 20 years, there have not been above four or five such cases, if so many; so that they are not of very frequent occurrence.

5416. Do the natives complain that they have not the same hold upon Europeans that they have upon another native?

I do not think the natives complain of it; I think the civil service complain that they sometimes find a troublesome European, and they would like to have a little more power over him; I do not think any evil results from the present state of the law in this respect.

5417. Do you think that there would be any danger in the position of the European if he were made subject to the same Court as the native?

I think so, under the present laws. The Law Commission say that the laws are not suited even for the natives; now, of course we must be very anxious not to be placed under such laws, which are not suited even for them to bear; for of course these evils are not known and felt by the natives as by civilized Europeans.

5418. But the true solution seems to be to make such a law as would be fit for anybody to be subject to?

Yes; that has not been made yet. There was a Criminal and a Civil Code, and a Code of Procedure prepared by the Law Commission, but they only brought in a portion of the Criminal Code, in a very objectionable form.

5419. But when once a good code is produced, there is no objection to Europeans being subject to the jurisdiction of the local Courts?

With good men as Judges, I do not see why they should not be.

5420. Earl of *Ellenborough.*] How is property divided in the neighbourhood of Dacca; are there any native gentlemen of large property there?

There are; but property is a good deal divided in the district of Dacca; in the neighbouring district of Mymunsing, Furredpore, &c., there are very large landowners, and in the Comillah district they are also very large.

5421. When you speak of large landholders, what do you assume to be the extent of their disposable income?

There are some landholders in the Mymunsing district that I fancy have about 60,000*l.* a year; very large estates.

5422. Earl of *Harrowby.*] And they are merely private gentlemen?
Yes.

5423. Earl of *Ellenborough.*] How do they expend their money?
Some are charitable, some spend in religious ceremonies and pilgrimages; there are very often family quarrels; they are very often in debt; they seem often to be in difficulties, and manage to spend their incomes.

5424. Lord *Wharncliffe.*] An income of that sort must imply the possession of a very large territory?
Yes, very large; the reason of their having such large estates is, that at the time of the perpetual settlement there was a great portion of that district uninhabited and in waste, and of course the settlement was very easy to the proprietors; there is one of those estates that I allude to now, that pays about 10,000 *l.* Government revenue, and I believe the present rental of the estate is upwards of six lacs of rupees.

5425. Lord *Stanley* of Alderley.] Are the cultivators upon those great estates better circumstanced than those under the immediate government of the Company?
In those large estates they generally let out portions in farms at rents, perhaps 10,000 or 15,000 rupees each, that is 1,000 *l.* or 1,500 *l.*; those farmers again subdivide the land; it is seldom that the large proprietors themselves keep it in their own hands.

5426. It is, in fact, like the middlemen?
Yes.

5427. Should you say that the estates so circumstanced are better or worse cultivated than the lands which are more directly under the Indian Government?
I should say that they are generally in a high state of cultivation; I do not think that those under the Indian Government are any better; but the Government estates are chiefly let out in the same way to farmers; the Government hold no property themselves; if there is a property belonging to Government, they let it out in farms in the same way.

5428. Earl of *Albemarle.*] What is the condition of the cultivators themselves, the under-tenants?
They are sometimes much oppressed by those above them, particularly upon the lands which are sublet.

5429. Lord *Broughton.*] You were understood to say that there are several gentlemen in that part of the country who are in the same situation as yourself, that is to say, not servants of the Company, but settlers there?
Yes, there are a few.

5430. Are any of them ever employed as uncovenanted servants, to assist in the administration of the country?
No.

5431. Do you not think that it might be advantageous if they were so employed, unless their time is completely filled up by their own occupations?
They might be so employed; there is no reason why they should not occupy a little of their time in that way.

5432. Earl of *Ellenborough.*] Do you think that, as in this country, country gentlemen act as Magistrates, it would be possible for one of those gentlemen engaged in indigo planting, or otherwise in commerce, to act as a Magistrate occasionally?
He might; but there might be cases where his own interests would clash.

5433. Earl of *Albermarle.*] Would he be disposed to do so?
I think he would; I think there is a want of encouragement of the sort to Europeans, but that it would be advantageous to encourage them.

The Witness is directed to withdraw.

C. M. Caldecott, Esq.

5th May 1853.

CHARLES MARRIOTT CALDECOTT, Esquire, is called in, and examined as follows:

5434. *Chairman.*] HOW long have you been in the service of the East India Company?

I entered the service in 1826, and left it at the end of 1845.

5435. Have you had any experience in the system of administration of justice in the Non-regulation Provinces?

I was sent to the Saugor and Nerbudda Territories in the beginning of 1843, and they were in civil matters Non-regulation.

5436. Can you state to the Committee the system adopted there in civil matters?

Previously to my going there, there had originally been, up to 1831, no fixed system at all: the Governor-general's Agent did what he thought proper. In the beginning of 1832, the Commissioner, who was then appointed, was made subject to the Sudder Nizamut Adawlut of the North-Western Provinces in criminal matters, and subject to the Sudder Board of Revenue of the North-Western Provinces in revenue matters; and in political and civil matters he was only subject to the orders of the Governor-general direct. The Commissioner established a system of Native Courts, which were called Pergunnah Courts: there were 25 of them for the whole Territory, held at the stations of the three principal grades of revenue officers, Tehsildars, Naib Tehsildars, and Zillahdars. Those Courts had cognizance in all matters up to 100 rupees in value, and the limitation of the cognizance was 12 years from the cause of action. The revenue officer, whatever his grade was, was the Official President, and there were four Assessors, two chosen by each party from a list of 12 supplied by the opposite party. The form of procedure was this: the plaintiff gave in a written plaint to the Official President, and lodged three per cent. upon the value, as an institution fee; that was the remuneration to the Official President; the Assessors had no remuneration. The defendant was then summoned, and, if he confessed the plaint, a decree was given without any Asssesors being summoned: if he denied the plaint, the plaintiff and he were confronted, and a list of Assessors was made out, and the case was proceeded with.

5437. Earl of *Ellenborough.*] How many European subordinate officers were there under the Commissioner?

Under the Commissioner there were three Principal Assistants over the three principal districts, having the duties of Civil Judges, and three secondary Assistants, having charge of smaller districts, with criminal powers, independent of, and revenue power subordinate to, the Principal Assistants, but no civil judicial power; and there were some Junior Assistants working under the Principal Assistants as mere assistants: there were six districts, three principal and three subordinate.

5438. Were those principally civil or military officers?

I believe they were about as many of the one as of the other; if I recollect rightly, there were, perhaps, more military than civil: the Commissioner was a civil officer.

5439. Down to what period did that system last?

There were objections raised to the Pergunnah Court system, particularly by Mr. Robert Mertins Bird, in 1832 or 1833. He was the chief revenue authority for the North-Western Provinces: he went on a tour through those Territories, and found that the system was not working, practically, to the satisfaction of the natives.

5440. It worked an insurrection at last, did not it?

The insurrection was in 1842, ten years afterwards. He found that the revenue officer, if he turned his attention to civil duties, became practically the lord and master of the Court, and that the Assessors became nominees of his, and that the result was, that revenue matters being supervised by the Sudder Board, and criminal matters being supervised by the Sudder Nizamut Adawlut, and political matters of course requiring attention, civil matters went to the wall, and were not thought of; though they were of equal importance to the eventual

happiness

C. M. Caldecott, Esq.

5th May 1853.

happiness of the country, they were not thought so immediately important, and had not the same immediate supervision. Mr. Shore, in 1836, in order to remedy this in some degree, established six Sudder Ameens in the six districts, having primary jurisdiction to any amount. I ought to have mentioned that the Pergunnah Courts had not the power of executing their own decrees. Those six Sudder Ameens had original jurisdiction, but with the condition that, in cases up to 400 rupees, that is, cases which might be heard in the Pergunnah Courts, they should adopt the fee system of the Pergunnah Courts, with the procedure of the Regulation Provinces. And those Sudder Ameens had also the power of executing the decrees of the Pergunnah Courts; but they were not very judiciously selected; two of them were good officers, but the other four were incompetent in the first instance; and there was not that supervision exercised over them which would have made them good officers. They did not help much the efficient performance of the civil duties. From both those Courts the primary appeal lay to the Principal Assistant of the three chief districts; and from him there was a final appeal to the Commissioner. In 1842 there was a rebellion in those provinces.

5441. What did that arise out of?

I am hardly competent to say; I went there after it; but it was from several causes. One cause was the disasters in Cabul and Affghanistan; another cause was a prophecy that prevailed in that part of the country, that in Sumbut 1900 there would be a change of dynasty.

5442. Lord *Elphinstone*.] That was the year in which the rebellion occurred?

It was. Another cause was that the people of Gwalior were very anxious to get up a rebellion, and the people of the Saugor and Nerbudda Territories were very much connected with them. I am not able to speak to any other cause.

5443. Earl of *Ellenborough*.] When you were sent there, were you not divested of political authority?

I was sent there merely to re-organize the civil and criminal jurisdiction there.

5444. All appeals being made to you?

The Commissioner having political, revenue and police jurisdiction; I having merely the charge of the jurisprudence.

5445. When you were sent there, what did you do?

I established 15 native Judges, with civil original jurisdiction; eight were called Second-class Moonsiffs, with cognizance up to 400 rupees, and, in the first instance, to follow the course of proceeding adopted in the Pergunnah Courts with the Assessors. Four First-class Moonsiffs, with jurisdiction up to 1,000 rupees; and three Sudder Ameens, with jurisdiction unlimited. Those 15 Courts were the sole Courts of primary jurisdiction for civil suits in the Saugor and Nerbudda Territories; they were made subject to two Principal Sudder Ameens, one having four districts and eight officers, the other having three districts and seven officers. I might mention that another European officer's district was formed in 1843. There are four first-class and three second-class districts. Those two Principal Sudder Ameens performed the duties of a Civil Judge in the provinces, and heard all the appeals from those eight and seven Primary Courts; they supervised those Courts in every way, and reported monthly what was going on in all those Courts, and six-monthly upon the characters of all the native judicial officers subject to them.

5446. Will you state how those native officers were selected?

The two Principal Sudder Ameens for the Saugor and Nerbudda Territories I believe were selected by Colonel Sleman; they were previously the two Sudder Ameens in the Saugor district. They had served under a good officer who had taught them their work, and they became as good Judges as I have ever met with.

5447. How many of the old native Judges were dismissed?

There were six Sudder Ameens altogether. The Pergunnah Courts were presided over by the revenue officers, who merely lost their civil jurisdiction by the abolition of those Courts. Of the six Sudder Ameens, two were promoted to the Principal Sudder Ameenships; three were retained (they should have been dismissed);

C. M. Caldecott, Esq.

6th May 1853.

missed); and one who was an Acting Sudder Ameen, and had not been confirmed in his appointment, was made a First-class Moonsiff.

5448. Why were not they dismissed if they were incompetent?
They had not had a fair chance before, and it was thought, perhaps, that they might become competent.

5449. Did they?
No; but they were old servants of the Government. I have not stated my own duty. There was a special appeal to me, as the Sudder Dewanny Adawlut of the Saugor and Nerbudda Territories, and I had accounts monthly from all the Courts, and six-monthly reports; and I reported to the Government yearly upon what was going on; I had to introduce a system of Code and Procedure, and a system of Stamps, and indeed every thing connected with the getting the civil administration into form.

5450. How many European officers had you under you?
In the criminal department there were twelve Deputy Commissioners under me as Sessions Judge.

5451. How did they work?
They had no civil power whatever.

5452. How did the Deputy Commissioners in the criminal department do the work which they had to perform?
Four of them had charge of first-class districts, and three had charge of second-class districts. As to the criminal jurisdiction, all the seven had equal criminal power, the power of a Magistrate; and there were five under them who worked as assistants to them.

5453. How were you satisfied generally with them?
Generally I had every reason to be satisfied with them as soon as they got over their inexperience.

5454. Had you occasion to make complaints of any one of them?
I had of one.

5455. Was he dismissed?
He was immediately removed.

5456. He was the only person whom you found incompetent?
He was the only person.

5457. You found that there was no return of a disposition to insurrection in the country after it had been placed under this management?
No.

5458. Have you heard from that district since you left it?
I hear constantly from the natives, and I hear occasionally from some of the European officers.

5459. It all goes on well, does it not?
I have every reason to believe so.

5460. The insurrection was very general, was it not, before you went there?
It was. The country is a mixed country; there are highlanders and lowlanders in the country; there are the Gonds below the Nerbudda, and the Thakoors in the Saugor district. The Gonds are quite uncivilized; the Thakoors are a turbulent class connected with Gwalior: among those two classes the insurrection was very prevalent.

5461. But there has been no return of that disposition manifested?
None whatever.

5462. Do you happen to recollect how the chiefs who were sent back from Chunar, who had been confined as prisoners, behaved upon their return?
I never heard any thing about them after their return.

5463. But all was quiet?
All was quiet.

5464. Did they appear to be generally satisfied with the administration as it was established by you?

At

C. M. Caldecott, Esq.

5th May 1853.

At first there was a very great run upon the Courts; justice had been practically stopped for a long period by inattention to the civil duties, and by the insurrection, and at first there was a great run upon the Courts; after that it took some time to make those people understand regular rules of practice; but when they found that regular rules of practice were adopted, they became accustomed to them, and seemed to prefer them to the chance of having a decision in their favour or against them, as happened to be their luck.

5465. Had you much personal communication with the chiefs of the country?

Not a great deal with them; they were persons, generally, that one could not get very near to; they were more under the political department; but I had great intercourse with the ordinary people of the country, with the cultivating classes and the commercial classes. I was in the habit always, when I took my walk in the morning, of freely conversing with them on miscellaneous matters; I knew a great deal of their habits and customs, and of their feelings.

5466. Did they at any time, in conversation with you, compare the system which had been established since your arrival with that which had preceded it?

That was specially a subject which I did not like to enter into with them.

5467. They seemed satisfied with it?

They would be inclined to appear so, whether they were or were not at heart; there is a tendency in them to flatter.

5468. There were great arrears of business in the Court before?

There were very great arrears of business.

5469. Did many of the principal people become suitors in the Courts?

There were some of them especially exempted from the jurisdiction of the Court by an order of the Government.

5470. Was any general instruction given to the officers as to the mode of treatment of those persons, in the event of their necessarily becoming suitors?

No; it was left to the discretion of the European officers.

5471. Lord *Elphinstone.*] How were those Moonsiffs paid?

The whole expense of the Civil Courts that were established, exclusive of my own pay, was 4,764 *l.* a year; then there was about 3,000 *l.* received by the introduction of stamps, which I established in place of the institution fees; this left something less than 2,000 *l.* as the expense of administering the Civil Law of a country nearly as large as Scotland, and with above two millions of inhabitants.

5472. Lord *Mont-Eagle.*] In that expense do you include the twelve Commissioners?

No, they had no civil powers; they had criminal powers; and that sum does not include my pay. Half my pay, and the expense of my establishment, has to be added: that would be 2,000 *l.* more. The two Principal Sudder Ameens, that is, the two native Civil Judges, had 400 rupees a month personal pay, and 150 rupees a month for their establishment; and the Sudder Ameens had 250, the First-class Moonsiffs 180, and the Second-class Moonsiffs 100, personal pay. But I do not advocate this scale of pay: it was because I could not get any more for them.

5473. Earl of *Ellenborough.*] Did you apply for an increase of pay for them?

Not in the first instance.

5474. Lord *Elphinstone.*] Are not those salaries as high as they are in the Regulation Provinces?

Not quite so high as some of the Principal Sudder Ameens and the Sudder Ameens are there.

5475. The Moonsiffs do not get more than 150 rupees a month in the Regulation Provinces?

No; but their power is very different in the Regulation Provinces. They are much more responsible officers in the Saugor and Nerbudda Territory: the distances from the Supervising Officers' station are greater, and the whole success of the administration depends very much upon the character of the officer, and upon

upon his introducing the system judiciously among a people not at all accustomed to the regular forms of Court.

5476. But he has jurisdiction only up to 400 rupees?

Yes; it is the people that they have to deal with, and the extreme distances over which their control extends, and their own distance from control, that render their character so very important.

5477. Earl of *Ellenborough.*] It is a very difficult country?

A very impracticable country to travel about in.

5478. Lord *Mont-Eagle.*] Were they natives of that part of India that you employed?

No, hardly any of them; I would not employ any of them if I had an option; the only natives who were competent were Mahrattas; who were mostly too much accustomed to the old native system of Mahratta rule.

5479. Lord *Elphinstone.*] And probably having communication with Gwalior?

They were Mahrattas, and that fact alone would almost answer any question that could be put.

5480. Lord *Stanley* of Alderley.] From what part of the country did the natives whom you employed come?

They were Mahomedans chiefly from the neighbourhood of Lucknow; there are some villages on the north-east of Lucknow where there are colleges, and a system of native education for Mahomedans; they were men of high caste, good scholars, and generally men of good character.

5481. They were subjects of the Nabob of Oude?

Yes.

5482. Lord *Mont-Eagle.*] Had they ever been judicially employed before?

Some of them; I got them together as well as I could; some were selected by Colonel Sleman; one was recommended by Mr. Hamilton, the Secretary to Government; and some I procured from my own knowledge in the provinces where I had been at work before.

5483. Earl of *Ellenborough.*] You had been at Cawnpore before?

Yes.

5484. Did you take any men from Cawnpore?

I sent for two or three from Cawnpore.

5485. Where had those Mahomedans been educated?

Those at Cawnpore had been educated as scholars at their own homes, and had afterwards learnt judicial practice in the offices at Cawnpore.

5486. What means of education have the Mahomedans in the dominions of Oude?

They have learned teachers; they club together and pay a learned teacher for teaching them.

5487. Is that at Lucknow only?

No; it is in other villages at Kakoree, Koorsee, &c., large Mahomedan settlements in the neighbourhood of Lucknow.

5488. There is a good deal of learning at Lucknow, is not there?

I never met with any particular scholars from Lucknow; they come chiefly from villages in the neighbourhood of Lucknow.

5489. Will you state what the administration of the police was?

I did not know much of the practical administration of the police in the Saugor and Nerbudda Territories; it was not subject to me; I only knew the result of their work in the criminal trials that came before me.

5490. Who was at the head of the police?

The Commissioner, the Governor-general's Agent.

5491. But he was not always resident in the Saugor and Nerbudda districts?

No; the Deputy Commissioner in charge of each district was in charge of the police of the district.

5492. Can you state what that police was?

C. M. Caldecott, Esq.

5th May 1853.

That police was composed partly of some of the old police, which was under the revenue officer, and partly of two military battalions, which were established in 1843.

5493. Did it appear efficient?

I do not think it was efficient in those Territories: the population is very much scattered, and the old police was very deficient in number. The military police were very well suited for the kind of half-police, half-military duty, that is, guarding the treasuries, and guarding the high roads, &c.; but they were not well adapted for detective purposes, because their military discipline and military organization is not quite consistent with sneaking about and poking into holes and corners, and finding out what is going on unobserved.

5494. Was that military police sufficiently numerous?

For its purposes it was so.

5495. Would there be any difficulty in attaching a detective police to the military police, and placing it separately under the Commissioner?

I do not see why there should be any difficulty in that. I was an old police officer in the Provinces, and one of the most decidedly police officers in the service. The great difficulty that I always found was the low pay of the lowest grade of policemen, the burkundaze.

5496. How did you select your policemen when you were acting at the head of the police?

It is a difficult thing to describe. A good, stout man, if he was of a respectable caste, was not to be had; he would prefer going into the regular army.

5497. Did many offer themselves?

Plenty of people offered themselves, but there were not many fit for the service. The great difficulty that I found in the police was that the police officers throughout India were so ill paid. A burkandaze is paid at the rate of four rupees a month; just above what a common labourer (coolly) gets; and he has, out of that, to find himself in uniform and arms, as well as to keep up appearances; and he has very great power: the appearances he has to keep up are not consistent with four rupees a month; the powers are consistent with his picking up a good deal, if he is dishonestly inclined; and the want of a reasonable subsistence makes him—compels him almost, to be, to a certain degree, dishonest.

5498. Have not the men in the military police higher pay than the burkandazes, and clothes also?

Very little more, I think.

5499. They have five or six rupees, have they not?

I think five.

5500. Had you any complaints of their conduct towards the natives?

No, only the general complaint of want of tact; they had been only recently organized.

5501. There was no oppression on their part?

Nothing to complain of.

5502. Did the officers who had the superintendence of them also appear to be active?

They were commanded by two European officers; one of them was a district officer, the other was not a district officer, and I think they had European Quartermaster Sergeants and Sergeants Major; but they were so much detached that those officers had very little power of supervising them, except as far as appearance went, and taking care that they were paid regularly: there were very few men kept at head quarters.

5503. Lord *Elphinstone*.] What languages are generally spoken in the Saugor and Nerbudda Territories?

Hindee-Hindostanee is current throughout; it will pass everywhere. When I went there, the Nagree-Hindee had been the character ordered to be used in the Courts; I found that the sources of justice were very much impeded thereby, for there was nobody that could read it fluently; it is like Old English capitals printed, each letter printed separately with nothing to show where one word ends

C. M. Caldecott,
Esq.

5th May 1853.

ends and another word begins. I was six days reading through the proceedings in one case that I had sent up to me by the district officer; it took me six days, the native officers deciphering it as fast as they could, from 10 to sunset, to get through the preliminary proceedings, I applied to the Government to have the order for Nagree character revoked, and the Persian character was introduced, the language being the Native Hindee as much as possible.

5504. The Mahratta is not used there?
It is not in the Courts.

5505. Earl of *Ellenborough.*] Did you remain stationary in one part of the country, or did you travel about?
Annually I went my circuit; as Criminal Judge I was subject to the Sudder Nizamut Adawlut, and had to be guided by the regulations. The circuit was 710 miles long, and there were two or three parts of it which could not be passed at particular times of the year for fear of jungle fever; there were several parts of it where no wheeled carriages could go, and I was obliged to hire camels from Cawnpore. It took me 70 days to march the circuit round, and as many more days to hold gaol deliveries at the seven different stations: I was about four months and ten days upon my circuit.

5506. Was that always in the winter months?
Always in the cold season; it was not safe to move before November.

5507. Earl of *Ellenborough.*] When you arrived in the camp, did you find a number of natives there, anxious to speak with you?
I used to march at daybreak and arrive at my camp early in the morning, to walk about the camp before breakfast, and about half-past 10 go to my office, and sit there till 4 o'clock; then the court was closed, and the office tent was struck to go on to the next stage; then I walked out shooting for an hour or two, till sunset, and used to have my talk with the natives as I went along.

5508. Did they approach you very willingly?
Quite so; they were always glad of any little opportunity of entering into conversation in their own way, and of expressing their wishes.

5509. Did any of the superior ranks take any opportunity of communicating with you?
The zemindars, those that could keep pace with me in walking.

5510. Did they shoot too?
No, they had not guns when with me.

5511. Earl of *Harrowby.*] Are there good roads in that part of the country?
There is one road from Mirzapore to Nagpore, on which Jubulpore is situated, my head-quarters, and there is nominally a military road from Jubulpore to Saugor; with the exception of those two roads, there is nothing practicable for wheeled carriages for any continuous distance. The great road from Nagpore to Mirzapore is the great cotton road from the south to the Ganges; it is a practicable road, except that large rivers are not bridged; and the bridges are most of them made in the Irish fashion, with an inverted arch under instead of a bridge over the small streams; in fact, a paved causeway under the water.

5512. So that you go through the river?
Yes.

5513. Lord *Stanley* of Alderley.] Was there anything done for the improvement of those roads during the period you were there?
No.

5514. Lord *Wharncliffe.*] Are you acquainted with the iron bridge built by Major Presgrave?
Yes, I have seen it; that is near Saugor.

5515. Is not that remarkably well-built?
It is, remarkably so.

5516. Built entirely by the natives on the spot?
Yes.

5517. With ore from the neighbourhood?
Yes; there is a great deal of iron in that neighbourhood.

C. M. Caldecott, Esq.

5th May 1853.

5518. Lord *Elphinstone*.] Was not there a colony of the children of Thugs at Jubulpore, where they were taught all sorts of trades?
Yes, not only the children of Thugs, but Thugs themselves.

5519. They were taught trades?
Yes, the Thugs themselves; those who had been admitted as approvers, and the children, are taught trades, to make carpets and different things; they are all under surveillance, in a kind of barrack.

5520. Are they kept in confinement for life?
They are under surveillance; there is a wall that they could get over; they could go out; there is no actual restraint put upon the approvers or the families of the Thugs, but the moral restraint, that they know that if they went off, they would be caught again, and probably hanged.

5521. Earl of *Ellenborough*.] In what state is the cultivation of cotton in Saugor?
There is not a great deal of it.

5522. Is it of good quality?
Nothing particular; there is not a great deal of cotton grown in the Saugor and Nerbudda Territories.

5523. Where does the cotton come from that you see embarked at Mirzapore?
It used formerly to come from Bundelkund; there is some grown in the valley of the Nerbudda, but it comes mainly from the south, from Oomrawuttee and the other side of Nagpore.

5524. From Oomrawuttee, do not they generally carry it to Bombay?
Some goes one way and some the other; the north-east side goes to Mirzapore.

5525. It is not actually at Oomrawuttee that the cotton is cultivated?
No; I believe Oomrawuttee is the mart.

5526. The main road you have spoken of passes through the territories of Rewah?
Yes.

5527. Do you know whether any material difficulty is experienced in carrying the cotton through the Rewah Territory from the fees levied by the Rajah of Rewah?
No, I never heard any great complaint of that; there was sometimes a little local oppression, where one or two other small petty States intervene. I think that there was more trouble in them than at Rewah; little States, not having more than a few miles of territory along the road; but I had nothing to do with those matters: I am merely speaking from hearsay; my duties were confined to the judicial department in the Saugor and Nerbudda Territories. I was concerned to a considerable extent in making the great trunk road from Allahabad to Delhi with Colonel Drummond; it was started in my district when I was at Allahabad in 1831 and 1832, and at Cawnpore from 1833 to 1836.

5528. Lord *Wharncliffe*.] Is not that the finest road in India?
It is a magnificent road.

5529. How was it made?
It was a raised road, and there was a certain quantity of conker laid upon it, which is a composition of some kind; I do not know the exact chemical proportions of it, but it is a sort of composition; it makes a concrete when it is pounded together with water. Like gravel, the larger pieces were laid three or four inches thick for the foundation, and then three inches of smaller, and then two inches of fine screened. In the Cawnpore district it was puddled by prisoners standing in a row up to their ankles in water puddling it, and pounding it with rammers; when it became dry, it set as hard as iron almost, and would last three years with any amount of traffic upon it.

5530. Earl of *Ellenborough*.] Had you anything to do with the road between Allahabad and Benares?
No; that was made before I went to Allahabad; I was made Magistrate of Allahabad in 1829.

C. M. Caldecott, Esq.

5th May 1853.

5531. Did you ever see a worse road in your life than the piece of that road near Benares?

Not for its cost; I have seen worse roads, but not roads that cost anything like the same money.

5532. Earl of *Harrowby*.] How are the cross country roads made?

I made 280 miles of cross country roads at the end of 1842 in six weeks, in the Cawnpore district; they were made by digging two trenches, sloping from the sides nine inches deep, and throwing the earth upon the centre.

5533. Will those bear the rains?

No; that was the first step for forming the roads; then the next year the next step would be to put some conker upon them; but they answer perfectly well for the dry season: I think those 280 miles cost 500 *l.*

5534. Lord *Stanley* of Alderley.] Did you generally find material for those roads?

No; it is difficult to find the conker in many parts; it is found generally in the neighbourhood of ravines and rivers, but not generally through the country.

5535. Earl of *Ellenborough*.] Were you obliged to make bricks in some places for the purpose of making roads?

No; I did not approve of brick ends for road-making; I have seen them used in England as well as India.

5536. What should you have made your road of if you had had no conker?

I was always at stations where there was conker, and therefore I cannot say.

5537. *Chairman*.] Does the conker last long after it is made?

On the great trunk road it will stand for three years any amount of traffic; the traffic always proceeds exactly on the same line; wherever a native sees the mark of a hackery wheel upon the road he is sure to follow, and all the hackeries will go on the same line, *ad infinitum*; they will never, of their own accord, move one half-inch out of their old route.

5538. Earl of *Harrowby*.] Do you think it would pay to lay out a considerable sum in road-making in India?

I think that if greater facilities of intercourse were provided, they would pay the Government largely; I might mention, for instance, that when I went from Cawnpore to Jubulpore in 1843, wheat was selling at Cawnpore at the rate of 50 pounds weight for a rupee (2 *s.*), and at Jubulpore, which is about 340 miles off, 200 pounds weight of wheat was to be had for 1 *s.* 9 *d.*; that is, 1 *s.* 9 *d.* there bought four times as much as 2 *s.* did at Cawnpore.

5539. In what way would the Government derive advantage directly from the improvement of the resources of the country under the present system of taxation?

There is hardly anything but the land-tax. A little is to be obtained by their becoming more litigious, and paying for more stamps: they would use a little more salt perhaps: but there are no indirect sources of taxation in India.

5540. So that the Government of the country is, directly, very little interested in the development of its resources?

Pecuniarily, very little interested: personal property, as such, does not pay one farthing towards the expense of the Government. Any amount of personal property, whatever that amount may be, is utterly, directly or indirectly untaxed; the only direct tax is in towns: there is a tax for a watch system, called the municipal rusudbundee, and that is the only direct tax that they pay; and that is upon the house only, not upon the means of the individual.

5541. Earl of *Ellenborough*.] Is it not found very difficult to levy any tax?

Very difficult.

5542. The Government of India have no power of increasing their taxation if they had a war, or any new demand upon their revenues?

No. The only increase that I have seen has been an increase in the salt duty; and, I believe, that was not to increase the revenue so much as to prevent the North-Western salt interfering with the Bengal salt.

C. M. Caldecott, Esq.

5th May 1853.

5543. Was not that accompanied by the abolition of a great many small taxes?

The first increase was; but the second, I believe, was not; it was to check the importation of salt from independent States.

5544. In what year was that increase?

I do not recollect, but I think it was in 1834 or 1835.

5545. Lord *Elphinstone.*] Are there any Europeans settled in the Saugor and Nerbudda Territories?

None. There were some German missionaries who came out, but they went away very soon. I believe there was no European resident in the Saugor and Nerbudda Territories, except those in the service of the Government. The difficulty of the custom system was in the native administration of it: I recollect when the internal customs were in force on the Ganges and the Jumna, the Government did not receive one-eighth of what was taken from the people: the native custom officers were the greatest curse upon the country that could possibly be.

5546. *Chairman.*] Are there any other points connected with the judicial system upon which you think you could usefully give information to the Committee?

There are objections made to the present civil judicial system, on the ground that the Judges have no previous training before they become Judges of Appeal. Lord William Bentinck abolished the Registers, who previously were young civilians appointed as Assistant Judges, with original jurisdiction up, if I recollect rightly, to 500 rupees in the first instance; and then, when they became more experienced, with increased power up to 1,000 rupees, and to hear appeals from the Native Judges. I think that a medium step between the two would be advisable. I do not think it advisable to return to the old system, speaking from my own experience. I was made a Register when I had been only three months at work in the public service. I think that when an officer has been made a Joint Magistrate and Deputy Collector, that is a civilian of some six or seven years' standing, he might be made an Assistant Judge at a station where there is a Civil Judge, with original jurisdiction to the same extent as the Principal Sudder Ameens now have, but with no appellate jurisdiction; and I think, in that case, it might be advisable to associate the Principal Sudder Ameen with the Civil Judge in hearing appeals from the Native Judges of primary jurisdiction, and where they agreed that should close all appeal. If they disagreed, the first Judge should have the casting vote; but then there should be an appeal to the higher Court. I think it of great importance that the appeal should be kept as open as possible.

5547. You do not think that there are too many at present?

There is no public opinion in India; there is no public in India; and, therefore, the great safety against oppression consists in the appeal being as open as possible.

5548. Lord *Mont-Eagle.*] Would you give successive appeals one after the other?

There is the first appeal and the special appeal; the special appeal at present is only admitted upon points of law, not upon the merits.

5549. You would not give another appeal from the decision upon the appeal?

No, I do not see any use in that whatever; but I would have the first and second appeal as open as possible. I have seen a great deal of ill arising from appeals being barred.

5550. Lord *Wynford.*] Is not litigation very much encouraged by the multiplicity of those appeals?

I think that that depends very much upon the state of the judicial administration. As soon as there is the power given, a great number of appeals come; but when the people see that the cases are speedily decided, and that the appeals are not unnecessarily attended to, they settle down into a natural course. I always listened as much as I could do to any case in any form in which I possibly could hear an appeal; but I did not find in the long run that that increased the appeals, though it did at first.

5551. If a native finds that he has another chance, is not he very much inclined to try it?

I think

G. M. Caldecott, Esq.

5th May 1853.

I think the chance is the thing; the old chance of getting the case into a limbo, from which it would not get out for several years, was one great point; but now, in the North-Western Provinces, where no case stands above six months in any grade, either in the first, second or third degree, there is not that object to be gained by delay; it is not so much the chance of a decree in his favour as the delay that is the object.

5552. Lord *Mont-Eagle.*] What interest do you allow in the Courts?
Twelve per cent. is the maximum.

5553. Is it a variable interest?
No; 12 per cent. was the legal amount.

5554. Was as much as that usually allowed in giving a decree?
Unless there was very special cause to prevent it; 12 per cent. was nothing like the usual interest in the country: 24 per cent. was much nearer.

5555. *Chairman.*] Do the natives themselves ever pay as much as 50 per cent.?
Yes, that is quite common; the interest for emergencies is very heavy, the same as it is in England; but with the difference, that the common interest, in the case of a cultivator or other person borrowing, would be 24 per cent.

5556. Lord *Elphinstone.*] What is the interest charged by the Agra bank?
I think it is 10 per cent., besides insurances and other things. It is seven years since I left India.

5557. But the agents at Calcutta do not charge any thing like that, do they?
I was not on the wrong side in my agent's books, and therefore I had no opportunity of knowing; but I recollect hearing, as a tradition, of the old agency houses having made as much as 27 per cent. with their indigo debtors.

5558. Lord *Wynford.*] But when the Government advanced to the cultivators, they did not charge at the rate of 24 per cent.?
No, I believe not. I was happily never in a country where advances were made; I was always in a country where there were zemindars or potails.

5559. It would not be a great boon to the people if they had to pay so much interest?
They could not get the money so easily any where else, and the return on the cultivation is great. The common allowance for seed, when the native merchants advance seed, is for receiving back at the rate of 9-16ths or 7-16ths of the produce.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday next,
Two o'clock.

Die Martis, 10° *Maii* 1853.

LORDS PRESENT:

The LORD PRESIDENT.	Lord COLCHESTER.
Earl of HARROWBY.	Lord WHARNCLIFFE.
Earl of STRADBROKE.	Lord WYNFORD.
Earl of ELLENBOROUGH.	Lord GLENELG.
Lord ELPHINSTONE.	Lord STANLEY of Alderley.
Lord MONT-EAGLE.	Lord MONTEAGLE of Brandon.

THE LORD PRESIDENT in the Chair.

Evidence on the Government of Indian Territories.

Henry Reeve, Esq.

10th May 1853.

HENRY REEVE, Esquire, is called in, and examined as follows:

5560. *Chairman.*] YOU are Registrar of the Judicial Committee of the Privy Council?
I am Registrar of the Privy Council.

5561. In that and in another capacity, have you attended the sittings of the Judicial Committee for some time past?
I have.

5562. Can you state to the Committee the substance of the decision which was come to by the Lords of the Privy Council in the case of Sir John Peter Grant, in 1829?
No; that was considerably before I took office, and before the Judicial Committee existed. The Judicial Committee exists by virtue of an Act that passed in the year 1833.

5563. But you are generally cognizant of the reports of cases in the Privy Council?
I have the reports of Mr. Knapp who was the reporter at the Privy Council at that time, and whose reports are the recognized and authoritative record of their proceedings.

5564. Can you, referring to that report, give to the Committee the principal points in that decision?
Your Lordships are probably aware, that in cases of special references to a Committee of the Council for their opinion, they do not sit exactly as a Court of Appeal; and the practice is not to give judgment upon the case, but to embody their Lordships' opinion in a report, which is afterwards submitted to the Queen.

5565. Earl of *Ellenborough.*] A copy of that report would have been transmitted to the Government in India?
A copy of the Order in Council, approving the report, would be transmitted to the Board of Control, and probably forwarded to the authorities in India.

5566. Lord *Monteagle* of Brandon.] Of course, after the Committee report to the Council, that report is, generally speaking, confirmed by an Act of the Council itself?
Precisely, by the Queen in Council.

5567. *Chairman.*] Will you be so good as to hand in a copy of the official report, and of the Order in Council approving and embodying that report?

Henry Reeve, Esq.

10th May 1853.

The same is delivered in, and read, as follows:

At the COUNCIL CHAMBER, Whitehall, the 14th of May 1829.

By a Committee of the Lords of His Majesty's Most Honourable Privy Council.

PRESENT:

LORD CHANCELLOR.
LORD PRESIDENT.
Lord ELLENBOROUGH.
Lord TENTERDEN.
Sir JOHN NICHOLL.
Sir JOHN BECKETT.

Mr. C. W. W. WYNN.
LORD CHIEF BARON.
LORD CHIEF JUSTICE BEST.
Sir CHRISTOPHER ROBINSON.
Mr. COURTENAY.
Mr. HOBHOUSE.

YOUR Majesty having been pleased by your Order in Council of the 13th of this instant, to refer unto this Committee the humble Petition of Sir John Peter Grant, Knight, only surviving Justice of the Supreme Court of Judicature of Bombay, setting forth, That by Letters Patent, bearing date the 8th day of December, in the fourth year of your Majesty's reign, your Majesty was pleased to grant, direct, ordain and appoint that there should be within the settlement of Bombay a Court of Record, which should be called the Supreme Court of Judicature at Bombay; and your Majesty did thereby create, direct and constitute the said Supreme Court of Judicature at Bombay to be a Court of Record, and that the same should consist of and be holden by and before one Principal Judge, who should be and be called the Chief Justice of the Supreme Court of Judicature at Bombay, and two other Judges, who should be and be called the Puisne Justices of the Supreme Court of Judicature at Bombay; and your Majesty was pleased to declare, that it was your further will and pleasure that the said Chief Justice and the said Puisne Justices should severally and respectively be, and they were all and every of them thereby appointed to be Justices and Conservators of the Peace and Coroners within and throughout the settlement of Bombay, and the town and island of Bombay and the limits thereof, and the factories subordinate thereto, and all the Territories which then were or thereafter might be subject to or dependent upon the Government of Bombay aforesaid, and to have such jurisdiction and authority as your Majesty's Justices of your Majesty's Court of King's Bench have and may lawfully exercise within that part of Great Britain called England, as far as circumstances will admit; and your Majesty did further grant, ordain and appoint that the said Supreme Court of Judicature at Bombay should have and use, as occasion might require, a Seal, bearing a device or impression of your Majesty's Royal Arms, and that all writs, summonses, precepts, rules, orders and other mandatory process, to be used, issued or awarded by the said Supreme Court of Judicature at Bombay, should run and be in the name and style of your Majesty, and be sealed with the seal of the Supreme Court; and your Majesty did by the said Letters Patent constitute and appoint your Majesty's trusty and well-beloved Sir Edward West, Knight, then Recorder of Bombay, to be the first Chief Justice, and your Majesty's trusty and well-beloved Sir Ralph Rice, Knight, then Recorder of Prince of Wales' Island, and Sir Charles Harcourt Chambers, Knight, to be the first Puisne Justices of your Majesty's said Supreme Court of Judicature at Bombay; and your Majesty did further direct, ordain and appoint a certain jurisdiction to appertain to the said Supreme Court of Judicature, for the hearing and determining of suits and actions arising in the Territories subject to or dependent upon the said Government, subject to certain provisoes, exemptions and declarations in the said Letters Patent mentioned; and did appoint a certain form of proceeding for the commencing, prosecuting, hearing and determining such civil suits and actions, and for the awarding and issuing of execution on the judgments pronounced therein; and your Majesty was also pleased to grant, ordain and appoint that the said Supreme Court should be a Court of Equity, and have equitable jurisdiction over the persons in the said Letters Patent described, and should be a Court of Oyer and Terminer and Gaol Delivery in and for the town and island of Bombay and the limits thereof, and the factories subordinate thereto; and also a Court of Ecclesiastical Jurisdiction within and throughout the town and island of Bombay, and the limits thereof; and further, that the said Supreme Court should be a Court of Admiralty in and for the said town and island of Bombay and the limits thereof, and the factories subordinate thereto, and all the Territories which now are or hereafter may be subject to or dependent upon the said Government; and your Majesty was further pleased to direct, establish and ordain, that if any person or persons should find him, her or themselves aggrieved by any judgment or determination of the Supreme Court of Judicature at Bombay, in any case whatsoever, it should and might be lawful for him, her or them to appeal to your Majesty, your heirs or successors, in your or their Privy Council, in such manner and under such restrictions and qualifications as are in the said Letters Patent mentioned; that is to say, in all judgments or determinations made by the said Supreme Court of Judicature at Bombay in any civil cause, the party and parties against whom or to whose immediate prejudice the said judgment or determination should be or tend, might by his or their humble Petition, to be preferred for that purpose to the said Court, pray leave to appeal to your Majesty, your heirs or successors in your or their Privy Council, stating in such Petition the cause or causes of appeal, and upon such order or orders of the said Court as in the said Letters Patent mentioned being performed to their satisfaction, the said Court should allow the appeal, and the party or

parties

Henry Reeve, Esq.

10th May 1853.

parties so thinking him, her or themselves aggrieved, should be at liberty to prefer and prosecute his, her or their appeal to your Majesty, your heirs or successors, in your or their Privy Council, in such manner and form and under such rules as are observed in appeals made to your Majesty from your plantations or colonies, or from your islands of Guernsey, Jersey, Sark or Alderney; and it was your Majesty's further will and pleasure, that in all indictments, informations and criminal suits and causes whatsoever, the said Supreme Court of Judicature at Bombay should have the full and absolute power and authority to allow or deny the appeal of the party pretending to be aggrieved, and also to award and order and regulate the terms upon which appeals should be allowed in such cases in which the said Court may think fit to allow such appeal; and, lastly, your Majesty was graciously pleased, by the said Letters Patent, strictly to charge and command all Governors and Commanders, Magistrates and Ministers, Civil and Military, and all other your faithful and liege subjects whatsoever in and throughout the British Territories and Possessions in the East Indies, and the countries, territories, districts and places which then were or should be thereafter dependent thereon, or subject or subordinate to the British Government there, that in the execution of the several powers, jurisdictions and authorities by the said Letters Patent granted, made, given or created, they be aiding, assisting and obedient in all things, as they should answer the contrary to their peril. That the said Sir Ralph Rice, Knight, resigned the office of Senior Puisne Justice of the said Supreme Court of Judicature at Bombay in November 1827, when the said Sir Charles Harcourt Chambers became Senior Puisne Justice thereof; and the said Sir Ralph Rice having intimated his desire to return to England, and to resign his office as aforesaid, and your Majesty having been graciously pleased to accept the said resignation, your Majesty was graciously pleased, in and by your Majesty's Royal Letters Patent, dated on the 30th day of August, in the eighth year of your Majesty's reign, Anno Domini 1827, to constitute and appoint the Petitioner, Sir John Peter Grant, Knight, to be one of the Puisne Judges of your Majesty's Supreme Court of Judicature at Bombay, in the room and place of the said Sir Ralph Rice, Knight; and the Petitioner having taken the oaths, and made and subscribed the declaration in and by your Majesty's said Letters Patent required, did take his seat as one of the Puisne Justices of the said Supreme Court of Judicature at Bombay on the 9th day of February 1828. That the said Sir Edward West, Knight, Chief Justice of your Majesty's Supreme Court of Judicature, departed this life on the 18th of August last, 1828. That on the 3d day of October then following, a letter was addressed to the Honourable Sir C. H. Chambers, Knight, and the Petitioner, dated Bombay Castle, 3d October 1828, and signed by the Governor, the Commander-in-Chief, and the first, second and third members of the Council of the Presidency of Bombay, in the words following: "We are quite aware that we transgress upon ordinary forms in addressing this letter to you, but the circumstances under which we are placed will, we trust, justify this departure from usage, and our knowledge of your public and private characters leads us to hope, that what we state will be received in that spirit in which it is written, and that notwithstanding your strict obligations to fulfil every part of your high and sacred duty as British Judges, you will, on this extraordinary occasion, deem yourselves at liberty to consider as much the objects as the rules of the Court over which you preside; and viewing the intention of the Legislature in its institution, as directed to the aid and support of the Government entrusted with the administration of this Presidency, you will for a short period be induced, by our representations, to abstain from any acts (however legal you may deem them) which, under the measures we have felt ourselves compelled to take, and which we deem essential to the interests committed to our charge, must have the effect of producing open collision between our authority and yours; and by doing so, not only diminish that respect in the native population of this country which it is so essential to both to maintain, but seriously to weaken, by a supposed division in our internal rule, those impressions on the minds of our native subjects, the existence of which is indispensable to the peace, prosperity and permanence of the Indian empire. This conclusion refers to a variety of circumstances, which we are equally forbid from explaining as you are from attending to such explanation; but we deem it necessary to state our conviction of the truth of what we have asserted, expecting that it may have some weight with you, as connected with the preservation of that strength in the Government which in all our territories, and particularly those we have so recently acquired, is the chief if not the only power we possess for maintaining that general peace, on the continuance of which the means of good rule and of administering law under any form must always depend.

"2d. In consequence of recent proceedings in the Supreme Court, in the cases of Moro Ragonath and Bappoo Gunness, we have felt compelled, for reasons which we have fully stated to our superiors, to direct that no further legal proceedings be admitted in the case of Moro Ragonath, and that no return be made to any writs of Habeas Corpus of a similar nature to those recently issued and directed to any officers of the Provincial Courts, or to any of our native subjects not residing on the island of Bombay.

"3d. We are quite sensible of the deep responsibility we incur by these measures, but must look for our justification in the necessity of our situation. The grounds upon which we act have exclusive reference to considerations of Civil Government and of State policy; but, as our resolution cannot be altered, until we receive the commands of those high authorities to which we are subject, we inform you of them, and we do most anxiously hope that the considerations we have before stated may lead you to limit yourselves to those protests and appeals against our conduct in the cases specified that you may deem it your duty to make, as any other conduct must, for reasons already stated, prove deeply injurious to the public interests, and can, under the resolution taken and avowed by Government, produce no

Henry Reeve, Esq.

10th May 1853.

result favourable either to the immediate or future establishment of the extended jurisdiction you have claimed. A very short period will elapse before an answer is received to the full and urgent reference we have made upon this subject; and we must again express our hope, that even the obligations under which we are sensible you act are not so imperative as to impel you to proceedings which the Government has thus explicitly stated its resolution to oppose." That the said letter was delivered by a common servant or messenger at the house of the said Sir Charles Harcourt Chambers, on the said 3d of October, unaccompanied by any communication from any of the secretaries or officers of the Local Government, authenticating it as a public act of the Government, or vouching for its being transmitted by authority. That on Monday, the 5th of October, the said Supreme Court being assembled for the dispatch of its judicial business, the said Sir Charles H. Chambers caused the said letter to be read to the Court by the Clerk of the Crown; after which the Petitioner, concurring with the said Sir Charles Harcourt Chambers in opinion regarding both the form and the substance of the communication, the Court directed that the Clerk of the Crown should inform the Chief Secretary of the Government of the Presidency by letter, that the said letter had been received, and that the Judges could take no notice thereof. That it was the intention of the said Sir Charles Harcourt Chambers and the Petitioner to lay before your Majesty, in an humble petition, the circumstances above set forth, and most dutifully and submissively to beseech your Majesty's royal protection against what they agreed in considering a most unconstitutional and criminal attempt on the part of those armed with the whole power, civil and military, of this Presidency, to approach your Majesty's Supreme Court of Judicature within the same, not by their humble petition or by motion, by themselves or their counsel in open Court, the only ways in which the law for the wisest purposes permits your Majesty's Judges to be addressed, but by means of such covert and private communication as is strictly forbidden by the forms reared by the wisdom of ages for the entrenching their persons against the danger and even the pollution of undue solicitation or menace; and this for the declared purpose of inducing your Majesty's Judges, notwithstanding their most sacred obligations to God, to your Majesty, and to themselves, to refuse to administer justice according to what they should deem to be law, in compliance with such notions as those who have thus approached them may from time to time entertain of what they shall call State policy, whenever they shall presume to allege to your Majesty's Judges the existence of a State necessity, whether they put the said Judges in possession of the grounds of it or not, enforcing such their desire by the menace, in case your Majesty's Judges shall fail to comply with their commands, of an open collision between the authority of the Governor and Council of this Presidency and the authority of your Most Sacred Majesty, which your Majesty has been graciously pleased to confide to the Judges here for the administration of justice. That while a petition to the above effect was preparing to be transmitted to England, in order most humbly to be laid at your Majesty's feet, the said Sir Charles Harcourt Chambers, then acting as Chief Justice of your Majesty's said Supreme Court, to the inexpressible grief of the Petitioner, and to the great loss of your Majesty's service, in the administration of justice in this Presidency, suddenly died on the 13th of October, leaving your Petitioner alone to sustain the weight of the said administration of justice, which, under any circumstances, the Petitioner would regard with much anxiety, but which cannot fail to fill him with alarm under the uncertainty the members of the Local Government have placed him in as to what acts of the Court, however legal the Court may deem them, as the members of the said Government have expressed themselves, they, the said Government, have come to the resolution to oppose under measures they have taken, which measures, as they are unexplained, so are they wholly unknown to the Petitioner, and which opposition, from the general terms it is expressed in, can mean nothing else than an opposition by the civil and military power they possess to such as shall be bound under heavy penalties to execute the process of the Court, when they shall attempt to do their duty, leading without fail to breaches of the peace, and in all human probability to the effusion of blood. That it appeared to the Petitioner, and to his late learned and estimable colleague, since it could not consist with their oaths, "that they will, to the best of their knowledge, skill and judgment, duly and justly execute the office of Justice of the said Supreme Court of Judicature, and impartially administer justice in every cause, matter or thing which shall come before them," to limit their functions to the administering justice in such matters, or to such extent only as they might conjecture would not have the effect of producing open collision between the authority of the Governor and Council of Bombay and that of your Majesty's Supreme Court here, or in obedience to the directions of the said Governor in Council to refuse "to admit further legal proceedings in the case of Moro Ragonath," a question of private right regarding the personal liberty of the said Moro Ragonath actually depending before them, or to refuse to direct your Majesty's writ of Habeas Corpus to such officers of the Provincial Courts, or to such native subjects of your Majesty not residing on the island of Bombay, as such writs ought by law, in the judgment of your Majesty's said Judges, to be directed to, on application duly made to them by persons desiring justice to be administered to them in that behalf; and since, if they should remain on their tribunal, they must be daily subject to applications for the administering of justice in cases and to effects most likely to meet with the unlawful opposition of the said Governor and Council, and to lead to public disturbance and outrage, and perhaps, eventually, to the shedding of blood. That it was a question for grave and anxious consideration, whether they your Majesty's Judges should not close the doors of your Majesty's Court, until its peaceful authority should be re-established, and the dangers removed which appear to surround every attempt that may be made to exert it.

That

That the Petitioner and his colleague were of opinion that of the two evils, great as they are, the encountering these dangers is the least; and, notwithstanding the intemperance and the want of knowledge of the laws and constitution displayed in this act of the Governor and Council of this Presidency, it might be reasonably hoped, that when they should see your Majesty's Judges proceeding in the firm but dispassionate manner which the sacred nature of their office cannot but beget, to fulfil its duties with an entire disregard to everything but their allegiance and the sanctity of their oaths, the said Governor and Council would be led to pause before carrying into execution their ill-considered threats. That the Petitioner is well aware how great a public calamity it is that that confidence in the wisdom and efficiency of the Local Government here should be shaken, which, at this distance from the seat of your Majesty's empire, is so essential to the preservation of peace and due obedience to your Majesty's laws in this distant and ill-settled and uncivilized part of your Majesty's dominions, and how essentially it is the duty of your Majesty's Supreme Court of Judicature to afford the support of the law to the Government which is by law actually established here, in all matters which are necessary to the maintenance of that peace and that obedience. But that which is especially confided to the Petitioner by your Majesty, is the administration of justice according to law, and the preserving the purity and the dignity of the Court he presides over, in order thereby to retain in those of your Majesty's native subjects who have been accustomed to the benefit of its jurisdiction, and to cultivate in those to whose knowledge it may be more lately brought, that respect for the Court and confidence in the law which are the only sure foundations of such peace and obedience; and that which is especially prohibited to the Petitioner, as the humble representative of your Majesty in the administration of justice in this Presidency, is, in the words of Magna Charta itself, that he shall "sell, deny or delay to any man justice or right," or shall suffer "that by any means," in the words of my Lord Coke's commentary on that great statute, "common right or common law shall be disturbed or delayed; no, though it be commanded under the Great Seal or Privie Seal, order, writ, letters, message or commandment whatsoever either from the King or any other;" and it is enjoined, "that he shall proceed as if no such writ, letters, orders, message or other commandment were come to him." That therefore which the Petitioner could not lawfully do if it were commanded him by the King, assuredly it were an unheard-of crime in him to do at the command of a Governor and Council appointed by the Directors of the Incorporation of the United Company of Merchants of England trading to the East Indies. That it is not by such means as these, or by resting the administration of justice upon grounds "having exclusive reference to considerations of civil government and of State policy," that your Majesty's Supreme Court of Judicature can contribute to the aid and support of the Government entrusted with the administration of this Presidency, and to attribute to the Legislature in its institution the intention that it should so do is a gross and scandalous libel upon that Legislature. Over the acts of those entrusted with the administration of this Presidency your Majesty's Supreme Court of Judicature was intended by the Legislature as a wholesome check and control. The aid and support which it was intended to afford to the Government of this Presidency, if by Government be meant the British rule over these conquered territories of your Majesty's Crown, was by its pure and fearless administration of justice, the effects of which, in attaching the inhabitants to your Majesty's person and Government, have been felt with a rapidity and in a degree equally satisfactory and surprising where its local and ordinary jurisdiction extends. Yet was it proposed to the Petitioner and his lamented colleague to sacrifice along with their own consciences and their honour the well-earned confidence in the Supreme Court of all those who are acquainted with its manner of administering justice, by showing that the Judges might be privately dealt with and corrupted (for fear is as corrupt as avarice), and rendered political instruments in the hands of the Local Government. That although the Petitioner, as a Judge, can allow of no authority but that of the law, yet he cannot be ignorant, from his knowledge of the legal and constitutional history of his country, that there may exist occasions when those possessing the supreme civil authority in such parts of your Majesty's dominions, as such occasion may arise in, may be called on to assume and exercise a power beyond the law for a time, so doing on the peril of their responsibility to your Majesty and to your Parliament, without violating the spirit of the constitution, but acting for the public safety. That such occasions must be rare, and relate to some specific occurrence or to some particular and designated district, and the question of the justification of such exercise of power Courts of Justice cannot entertain. They are bound in the first instance, whatever be the occasion, to pronounce it illegal, and they will be bound to punish it if the actors shall not be indemnified by Parliament. But what was attempted in the present instance by the Governor and Council of Bombay was to induce your Majesty's Judges to refuse to declare the law to be such as it truly is, and to consent to declare the law to be such as it is not, in the exercise of their functions, deciding on matters of private right, in order that the said Governor and Council might be sheltered from the responsibility of assuming a power beyond the law, on occasions which they say are of such importance to the public safety as to justify their so doing; of which occasions the said Governor and Council alone possess the means of knowing the circumstances and nature, and are alone to judge: and what inconvenience, beyond the unavoidable inconvenience of a delay of justice to be submitted to, if necessary to the public safety, can arise from your Majesty's Court pursuing its ordinary and lawful course, as it is bound to do, and the said Governor and Council interposing on their responsibility and under such public declarations, and with such precautions as might avoid disrespect to the Court, and the danger of a breach of the peace in such particular

Henry Reeve, Esq.

30th May 1853.

case as the public safety may truly require, if such case do exist or shall arise, till such time as the opinion of Parliament on such interposition may be had, the Petitioner is unable to perceive. As no such proceeding could be justified but by paramount considerations of the public safety, *ubi salus populi suprema lex*, the dignity of the Court would not be brought in question: the public safety would be provided for; the said Governor and Council would receive indemnity, if they had only acted as the public safety required: and, on the other hand, if they had acted otherwise, the rights of the private parties would be entire, since they would be entitled to full indemnification at the hands of the said Governor and Council for the loss they had sustained through the frustration of the process of the Court. That in the times of some of your Majesty's royal progenitors, the King's Secretaries of State and Privy Council have detained persons in prison for reasons of state, contrary to law, trusting to the circumstances for their justification; but it was never heard of in the most arbitrary and corrupt times, that it had been proposed by the Ministers of the Crown to the King's Judges, that they should abstain from acts which they deemed legal, in obedience to the authority or from dread of the opposition of such Ministers of the Crown; still less was it ever heard of that any Ministers of the Crown presumed to dictate to the King's Judges what proceeding should be allowed or disallowed in a matter of private right depending before them, or to reprehend them for what they had done in any particular case, or to dictate to them what they should do or abstain from doing in any description of cases that might afterwards occur. That this is what has been done by the said Governor and Council towards your Majesty's Judges in this instance; and the said Governor and Council have admitted that they were aware that what they desired of your Majesty's said Judges was contrary to the duty of the said Judges; for they say that notwithstanding their strict obligations to fulfil every part of their high and sacred duty as British Judges, which implies that something was desired not in conformity with those obligations, they hope that your Majesty's said "Judges will consider as much the objects as the rules of the Court over which they preside." Whereas the rules of a Court are the law of the Court, and the objects of a Court can be no other than to administer the law. That the first paragraph of the said letter of the said Governor and Council is so indefinite in its terms that the Petitioner can assign no meaning to it on which it would be safe to act, unless indeed it mean that, before proceeding to any judicial acts, your Majesty's Judges should inquire of the said Governor and Council whether such act fell under the measures they there allude to. That in the second paragraph of the said letter, the said Governor and Council are more explicit, referring directly to two separate matters; the one being the directing of writs of *Habeas Corpus ad subjiciendum* to natives of India, in the said letter of the said Governor and Council, styled, "Our native subjects" not residing on the island of Bombay; the other being the directing of such writs to officers of the Provincial Courts. That the said Governor and Council, either taking upon themselves to decide on matters of law, constituting themselves, of their own authority, a Court of Appeal from the judgments of your Majesty's Supreme Court of Judicature in matters of law, or presuming deliberately to set at open defiance your Majesty's authority, do therein declare that they have directed that no returns be made to any writ of Habeas Corpus of either of the said descriptions issued in your Majesty's name by your Majesty's said Justices. That natives of India, not residing on the island of Bombay, with reference to the jurisdiction of your Majesty's Supreme Court, are of two descriptions, namely, such as have been employed by, or directly or indirectly in, the service of the said United Company, or any of the subjects of your Majesty, and such as have not been so employed or directly or indirectly in such service; and power and authority to hear and determine all suits and actions whatsoever against any persons, whether natives of India or not, who, at the time when the cause of action shall have arisen, shall have been so employed or in such service; such suits or actions being for wrongs or trespasses is expressly conferred by your Majesty's Letters Patent on your Majesty's said Supreme Court, following forth the special enactments of several Acts of Parliament made in that behalf; yet is it declared by the said Governor and Council that they will not suffer any writs of Habeas Corpus to be made effectual, directed to such persons so expressly placed, under the jurisdiction of your Majesty's said Court, in the very matters which such writs of Habeas Corpus may directly relate to. That the other class of writs of Habeas Corpus to be issued by your Majesty's Supreme Court, to which the said Governor and Council have thought fit to direct that no returns be made, are such as may be directed to any officers of the Provincial Courts, the object of which direction so given by such Governor and Council can be no other than to give to these Provincial Courts, and to the said Governor and Council through them, the unlimited power of arbitrary and indefinite imprisonment of all persons, whether British-born, or natives, or foreigners, whom they shall find in any part of the extensive territories of this Presidency, beyond the narrow limits of this little island, without any means afforded to the persons so imprisoned of obtaining their liberty, but through the good-will and pleasure of the said Governor and Council. But the officers of the said Provincial Courts are not exclusively natives or foreigners, but British-born subjects, and all magisterial officers of the said Courts are British-born subjects exclusively, who are expressly declared by the said Act of the 53d year of the reign of his late Majesty to be subject only to the jurisdiction of your Majesty's Supreme Court, yet have the said Governor and Council taken upon themselves to direct that these persons shall not obey the writs issued by the only Court to whose jurisdiction they are by law subject. Again, these very Magistrates are your Majesty's Justices of the Peace; and it is declared by an Act of the 33d year of the reign of his said late Majesty, intituled, "An Act for continuing, in the East India Company, for a further time, the Possession of the British Territories in India," &c. (33 Geo. 3, c. 52, s. 153), that

Henry Reeve, Esq.

10th May 1853.

that all convictions, judgments, orders and other proceedings which shall be had, made or pronounced by or before any Justice or Justices of the Peace within any of the British Settlements or Territories shall be removable by writ of Certiorari into the Supreme Court of the Presidency: and how this may be done where the conviction, judgment or order complained of is for imprisonment of the party complaining, without power in your Majesty's Supreme Court to issue your Majesty's prerogative writ of Habeas Corpus to bring up the body of the person so complaining, as well as your Majesty's prerogative writ of Certiorari, or why the same reasons which have induced the said Governor and Council to suspend the issuing of writs of Habeas Corpus should not induce them to suspend the issuing of writs of Certiorari to inferior Courts and Magistrates, the Petitioner is ignorant. The Petitioner humbly submits to your Majesty the facts above set forth with a degree of reluctance which nothing could overcome but a deep sense of the importance of the interests committed by your Majesty to his charge, now for a considerable time to come unhappily devolved on him alone, and a dutiful persuasion how nearly it concerns your Majesty's honour that the administration of justice should be esteemed pure and sacred by all men in every part of your Majesty's dominions, not only on account of its own intrinsic value, but as directly proceeding from your Majesty's authority; that the integrity and independence of your Majesty's Judges should be respected as unapproachable, and that no men be permitted with impunity to set themselves above your Majesty's laws or just prerogative, and this more especially in countries where there is too little inclination in those who, under circumstances quite new in history, have become invested with the political administration of these countries to teach the inhabitants to look to your Majesty as the true source of justice and power. What the political considerations may be which have weighed with the said Governor and Council, the Petitioner neither ought to know, nor in point of fact does know, nor can he conjecture, if they be any other than a desire that the administration of justice by officers of their appointment in the Provinces, which in the instances that have been brought before the Petitioner have been proved to be grossly faulty and unlawful, may be independent of the general superintendence of your Majesty's Supreme Court, as is possessed by your Majesty's Court of King's Bench in England over inferior jurisdictions in England, and of your Majesty's laws. That the Petitioner has heard that the distant provinces of the Deccan, although for 10 years under the government of the servants of the East India Company, are still in a very unsettled state; but this does not apply to the island of Salsette, united to the island of Bombay by a mole, and the districts of the Northern and Southern Caucas, and Guzzerat, now for many years peacefully submitted to the British rule, and maintaining constant commercial intercourse with Bombay; and the Petitioner would have supposed the circumstance of persons coming for the first time from Poonah in the Deccan, of their own accord, to demand justice peacefully and legally from your Majesty's Court at Bombay, in a case in which, as they stated, a domestic outrage had been committed, and of the person against whom the complaint was made, a man of high rank at Poonah, placing your Majesty's writ on his head, in token of his highest respect for your Majesty's commands, expressed according to the manners of his country, and declaring, as his reason for not obeying it, that he was under the jurisdiction of the Provincial Court at Poonah, and that the British authorities, under whose protection he lived, must answer for him, would have been hailed as indicating that a great step had been made, which it was the proper business of a wise Government to encourage towards bringing these countries under subjection to the English Courts, and to an English purity and wisdom in the administration of justice. That the Petitioner knows that all the native inhabitants, within the ordinary jurisdiction of your Majesty's Supreme Court, look up to it with respect, and with confidence and gratitude for the due administration of justice, and for the protection of their private and public rights; and that to shake its authority, and to weaken that respect and confidence, to leave the Provincial Courts, appointed by the Company's Government, without such control over their acts, where they may violate private liberty, as is now by law possessed by your Majesty's Supreme Court, limited as that control is, and destitute of the power of interfering with their lawful jurisdiction, and generally to place the inhabitants of these your Majesty's territories in India in a situation which the inhabitants of no plantations, colonies or foreign possessions of the Crown of England, where any English Court of Law has been established, are or ever were placed in, namely, without the protection of the writ of Habeas Corpus, would be of most dangerous consequence. The Petitioner, therefore, prays your Majesty to take the premises into your royal and most gracious consideration, and to give such commands concerning the same as to your Majesty's royal wisdom shall seem meet for the due vindication and protection of the dignity and lawful authority of your Majesty's Supreme Court of Judicature at Bombay. The Lords of the Committee, in obedience to your Majesty's said Order of Reference, this day took the said memorial into consideration; and having heard counsel in support of the allegations contained in the said petition, and also in behalf of the Governor and Council of Bombay, their Lordships agree to report, as their opinion, to your Majesty, that the writs of Habeas Corpus were improperly issued in the two cases referred to in the said petition. That the Supreme Court has no power or authority to issue a writ of Habeas Corpus, except when directed either to a person resident within those local limits wherein such Court has a general jurisdiction, or to a person out of such local limits, who is personally subject to the civil and criminal jurisdiction of the Supreme Court. That the Supreme Court has no power or authority to issue a writ of Habeas Corpus to the gaoler or officer of a Native Court, as such officer, the Supreme Court having no power to discharge persons imprisoned under the authority of a Native Court.

Henry Reeve, Esq.

10th May 1853.

That the Supreme Court is bound to notice the jurisdiction of the Native Court, without having the same specially set forth in the return to a writ of Habeas Corpus.

HIS MAJESTY was pleased, by his Order in Council of the 10th day of June 1829, to approve the said Report.

5568. Has the subject of introducing any measure for the more economical and speedy transaction of business connected with appeals from India been under the consideration of the Judicial Committee?

Yes, the Judicial Committee have lately taken evidence on this subject; they have examined several practitioners, counsel and solicitors, who have explained to their Lordships the manner in which appeals are conducted, and also the causes which have led to considerable delay. Your Lordships are probably aware that the particular provision of the Act of Will. 4, which provided that the East India Company should be directed by the Crown to bring a large arrear of appeals, then existing, to hearing, has been repealed by a subsequent Act of Parliament. The consequence of the repeal of that provision was that the arrear began to accumulate again; and I thought it my duty recently to call their Lordships' attention to that circumstance; and in consequence of the present arrear (it is not very large, but still it threatens to increase), their Lordships entered into a consideration of the causes of the delay, and the means which might be taken to avoid it in future. Certain suggestions have been made, which are now under the consideration of the Judicial Committee. The Lord President is in possession of them; and I have reason to believe that they will be, before long, embodied in an Order in Council, which will apply to the whole appellate jurisdiction of the Crown.

5569. Earl of *Ellenborough*.] Do those recommendations include a recommendation that ample notice should be given in India that the prosecution of appeals here is no longer borne at the expense of the Government?

I think that has been done.

5570. Are the persons in India fully cognizant of it?

One of the great difficulties in these cases is, that the parties in India sometimes reside at such vast distances from the Sudder Courts, and in some cases are so utterly strange to the legal proceedings which are carried on in their own names, that it is difficult to say how far they are cognizant of their own affairs.

5571. (*Chairman*.] Are you aware whether any of the principal causes of delay would rest with the mode of conducting business in this country, or with the difficulty of obtaining remittances from India on the part of the solicitors?

As far as the practice of the solicitors at the Privy Council is concerned, I believe I may say there is no delay at all. As soon as an appeal is ready for hearing, it is heard within three months; that, I should say, is the longest time. There occurs, in the first place, a very considerable delay in the preparation of the transcript; it is necessary that the papers which are from the Native Courts, and which are in one of the Eastern languages, should be translated, which is necessarily a very long operation; and then they must also be copied; and consequently, in many cases, some years have elapsed, one or two years frequently, never less than one, that is, before the transcript is in a condition to be sent over from India; then it is generally sent by sea, which takes some considerable time. It arrives here, and then it is necessary that agents should have been not only instructed, but provided with funds to prosecute the case, by taking a copy of those proceedings, and adopting the other measures necessary to prosecute the case.

5572. Earl of *Ellenborough*.] Is it a certified translation that is sent over?

The translation is made by the officers of the Court in India, and the whole is certified by the Registrar in the Sudder; that is a great cause of delay. In cases in which parties have at once remitted to their agents in England a sum sufficient to cover the expenses of the actual outlay of fees to counsel, and the costs of printing, and various other charges, or in which the solicitor is satisfied of the solvency of his Indian client, the appeal may be easily heard in a year, and sent back.

Henry Reeve, Esq.

10th May 1853.

5573. Are you present at the deliberations of the Judicial Committee of the Privy Council?

Yes.

5574. Has it ever appeared to you that any inconvenience arose from there being no person attached to the Judicial Committee of the Privy Council, who is practically acquainted with the administration of the law in the Provinces of India, in what is called the Mofussil?

I think the Judicial Committee has sometimes found itself embarrassed in dealing with those peculiar questions, especially questions of fact, when they arise, by their necessary ignorance, sometimes of the usages, and sometimes of the laws of the natives. Your Lordships are aware that the Judicial Committee have had the assistance of two Chief Justices of Bengal, Sir Edward East and Sir Edward Ryan.

5575. But those Chief Justices of the Supreme Court did not administer in their Court the law which is administered in the Mofussil, and therefore had no means of assisting the Judicial Committee with respect to that law?

No; their practical experience with the law administered in the Mofussil is necessarily very limited. The Act constituting the Judicial Committee provides for the presence of two Assessors, being Privy Councillors; the Act requires that they should have been Judges in some of Her Majesty's Courts abroad; and a salary of 400 *l.* a year is attached to that duty.

5576. Then, without an alteration in the Act, a gentleman who had been employed as Judge in the Mofussil, could not be added to the Judicial Committee of the Privy Council?

There would be some objection, I think, to adding a gentleman in those circumstances to the Judicial Committee, because the law has expressly provided (and this was the great reform accomplished by Lord Brougham's Act), that nobody should be a member of the Judicial Committee without particular legal qualifications, inasmuch as the Judicial Committee has not only an Indian jurisdiction, for which an Indian Judge would be a very useful assistant, but it has also a very extensive jurisdiction, involving questions of Ecclesiastical and Admiralty law at home and other laws in the colonies.

5577. But there would be no difficulty in so framing the enactments of a new Act, as to enable a gentleman who has acted as Judge in the Mofussil to be made a Privy Councillor and to be a member of the Judicial Committee, solely for the purpose of hearing cases remitted from India?

Just so; at present by the Church Discipline Act the Archbishops of Canterbury and York, and the Bishop of London, who are Privy Councillors, are members of the Judicial Committee, for the purpose of hearing appeals under that Act. There would be no difficulty, I presume, in framing a clause for that purpose, nor would there be any difficulty in summoning any gentleman who should be made a Privy Councillor to attend the sittings of the Judicial Committee. The only advantage derived from that clause in the Act is, that there is the means of paying him a small salary, which of course could not be awarded to him unless he came under the conditions of the Act; but it is perfectly competent to the Crown to summon any Privy Councillor to attend that Committee.

5578. *Chairman.*] Are the cases of appeal from India, which are brought before the Judicial Committee of the Privy Council, generally cases involving large sums of money, or only involving important principles of law?

The limitation in money by the existing rules is 10,000 rupees in all the Presidencies. Till about 15 years ago the limitation was higher in Bengal and lower in Bombay. Their Lordships at that time made an alteration in the rules, and 10,000 rupees or 1,000 *l.* was taken as the general standard; but I should say that, generally speaking, the subjects of the appeals are of very large value.

5579. Earl of *Ellenborough.*] What was the sum involved in the appeal of the Rajah of Benares, which was decided about 1843 or 1844?

I am not sure what the amount was.

5580. Was it not above 50,000 *l.*?

I do not know.

5581. What

Henry Reeve, Esq.

10th May 1853.

5581. What was the sum in question in the Dacca case, Mitford's case, where a large sum was bequeathed for the purpose of charity at Dacca?

That must have been before I took office; I do not remember the case.

5582. *Chairman.*] You are cognizant of a Return which has lately been presented to the Committee, regarding the number of appeals and the decisions which have taken place upon them?

A Return has recently been ordered in answer to an Address from the House of Commons, which contains a schedule and a table of all appeals from India which have been heard since the Judicial Committee has existed. In 1834 it began its operations, and this includes a considerable arrear, which existed at that time, and which was cleared off under the provision enabling the East India Company to bring them to a hearing, and to pay the expenses, subject to recovering them from the parties. They did, however, themselves pay a large portion of the expense. This Return is, I believe, a complete statement of all the causes which have been so heard since the year 1834; it contains the names of the parties, the Courts from which they are brought, the subject of the appeal, whether the parties were Natives or Europeans, the date of the sentence appealed from, the date of lodging the appeal, the date of the order made upon the appeal, the result of the appeal, and the Judges who were present to hear it.

5583. Is it the case that more decisions of the Supreme Courts have been reversed than of the Sudder Courts?

Considerably more; I believe in the proportion of five to one; but it must be borne in mind that, especially in the earlier period of the formation of the Judicial Committee, the causes were mostly causes from the Native Courts: the subject was comparatively new to their Lordships, and I do not think they reversed those judgments with so much resolution as they do now, for they did not feel so conversant with the Indian jurisprudence as they did with questions of English procedure and English law, whith are dealt with in the Supreme Courts in India.

5584. Earl of *Ellenborough.*] Is not that a very sufficient reason for adding to their number some gentlemen conversant with the mode of proceeding and the law administered in the Mofussil?

Yes; if I may venture to express an opinion, I think that would be a great improvement; it would be done immediately, by making any of those gentlemen members of the Privy Council.

The Witness is directed to withdraw.

Lieutenant-colonel FREDERICK ABBOTT, C. B., is called in, and examined as follows:

Lieut.-col. F. Abbott, C. B.

5585. *Chairman.*] YOU are at the head of the College of Addiscombe?

I am Lieutenant-governor.

5586. How long have you held that situation?

Two years and a half.

5587. Earl of *Ellenborough.*] Will you have the goodness to state to the Committee what is the course of instruction at Addiscombe; first, at what age do young gentlemen go there?

They are allowed to come between 14 and 18 years of age.

5588. At what age do they usually come?

From 16 to 18.

5589. How long does the course of instruction usually last?

Two years: it is limited to two years.

5590. If they come at 14, would they be allowed to go to India at 16?

Yes.

Lieut.-col. F. Abbott, C.B.

10th May 1853.

5591. You say they are allowed to come at from 14 to 18; have you the same course of instruction for young gentlemen at those very dissimilar ages?
We have.

5592. Lord *Monteagle* of Brandon.] Is the period of instruction the same for students who are intended for the Line and for those who are designed for a scientific department, say the Engineers?
All alike; all stay two years.

5593. Earl of *Ellenborough.*] They are all sent there indiscriminately, to be passed on to the Line, the Cavalry, the Artillery, or the Engineers, according to their proficiency?
I will succinctly state our course.

5594. After an officer is turned over to the Engineers, has he any further period of instruction in that course?
Not at Addiscombe, but he has at Chatham.

5595. How long do they remain at Chatham?
About 20 months, in addition to the Addiscombe course.

5596. Have the home authorities any control over their instruction at Chatham; do they superintend it in any manner?
No; it is entirely under the hands of Colonel Jones, who makes a report if he has any complaint to make against the individuals under his instruction.

5597. Is there any examination upon their leaving Chatham?
None at all: it is a course that they have to go through, and which being completed, Colonel Jones reports them fit for service.

5598. In point of fact, would not the course of instruction of Engineers intended for India, and of Engineers intended for the Royal Service, be somewhat different, in consequence of the Engineers in India having under them the roads and buildings more than any military service?
A portion of the time at Chatham is set apart for a course of civil engineering.

5599. Lord *Monteagle* of Brandon.] Is not that the case also with respect to the instruction of the Royal Engineers?
I believe they go through the same course exactly.

5600. Earl of *Ellenborough.*] In point of fact, the Engineers are of necessity Civil Engineers, and act as such?
When not wanted for military purposes.

5601. Will you state what is the course of instruction at Addiscombe in the first year?
There is no limitation with regard to the different years, except with reference to some portions of particular branches of education. There is a certain examination, which is called the "Examination for Admission." All are required to pass that before they are allowed to enter. After that, in certain branches, they get on as fast as they can in mathematics and in plan-drawing, and in all other branches, except Hindostanee and the theory of fortification.

5602. Is there any advantage to an officer from getting through that course of instruction sooner than others?
The best at the end of the two years are selected from what are called the prizes, that is, the Engineer Branch and the Artillery Branch; the rest go out the

5603. They are all obliged to remain two years?
Yes; with one or two exceptions, which occur perhaps once in two or three years, but which, I believe, will be done away.

5604. In what manner is the instruction given?
All in class, not by lectures.

5605. All being present at the time?
All being present at the time. They are divided into classes, and each class is superintended by a Professor, who assists them just as a tutor would at college.

Lieut.-col. F. Abbott, C.B.

10th May 1853.

5606. Are they practically examined every day as to the progress which they have made that day in drawing or mathematics, or anything else?

No examination takes place till the end of the half year, except in fortification; they are examined in the theory once a month.

5607. Have you any practical fortification at Addiscombe?

We have practised fortification in sand model-rooms on a large scale.

5608. But not on the open ground?

No.

5609. Never?

Never.

5610. That is done afterwards at Chatham?

Yes.

5611. Is Hindostanee the only language that is taught?

We have Latin and French.

5612. But no other Oriental language?

None.

5613. Is not the native language almost as necessary for an officer in the army as it is for a civilian?

He will pick it up in India in a very short time; it is hardly worth while, in my opinion, to devote time to Oriental languages in Europe.

5614. Will you state the different subjects of education?

We have mathematics, pure and mixed; geometry; fortification; Hindostanee; military surveying, or topographical drawing; civil drawing, that is to say, landscape drawing; and a small portion of time is devoted to Latin and French.

5615. Are there any military books used, for the purpose of giving them a knowledge of strategy, or the movement of armies?

None.

5616. Has it never been considered an advantageous thing to instruct them in that?

I think we have not time; the time is too short to allow of anything of that sort.

5617. Are not the books themselves so interesting that one would almost think that if they were given as books of amusement, they would be read?

Eight hours of study rather disqualify most young men for serious reading.

5618. Do you think there would be any difficulty in so arranging the course of instruction at a College, as to make it possible to unite in the same College young gentlemen intended for the civil as well as for the military profession; giving them in the earlier period of their instruction one common instruction, which should be of use to them to whatever department they might afterwards be directed; and having an examination at the end of the year, which examination should determine whether the person examined should be destined for the civil or for the military branch of the service, after which his instruction should be altered accordingly?

I think you could not carry on a course of education of that kind at one place throughout. It might be arranged to have a preparatory course for both services up to a certain point; but after that, I should think, when the selection took place for the different services, the scholars must be separated.

5619. Would not there still be some common subject of instruction?

I think it would be very advantageous for all civilians to go through part of the course that is carried on at Addiscombe, and I believe some of the Court of Directors have sent their sons to Addiscombe preparatory to the civil service; but I do not think it advisable to keep them together afterwards.

5620. Lord *Monteagle* of Brandon.] What branches of the Addiscombe instruction were those which were so united and blended with the Haileybury course?

Drawing, geometry and mathematics, pure and mixed, are all useful for a civilian: the civilians in India become superintendents of districts; they have no engineer at hand; they have to make roads and bridges, to make surveys, to make tanks and all sorts of civil engineering works, when perhaps they have no professional assistance.

5621. Lord *Wharncliffe*.] Supposing provision was made for separate instruction

Lieut.-col. F. Abbott, C.B.

10th May 1853.

tion of the two branches of the service in their later stages, do you mean, by your previous answer, to give it as your opinion that it would not be advantageous for the two classes to be educated together?

Not as youths; they could not be educated together, the course of instruction is so different.

5622. But supposing the different courses of instruction were provided for, and that they had the means of obtaining an education corresponding with the branches to which they were destined, do you mean that the bringing young men intended for the civil and military services together into the same college would be disadvantageous?

It would be disadvantageous.

5623. Earl of *Ellenborough.*] Do you not think, from your experience of India, that it would be very advantageous that every thing like a feeling of superiority over the military service should be banished from the minds of those destined to the civil service, and that all the gentlemen who might hereafter belong to either branch of the service should feel that they all formed one service, though their individual ability, or the direction of their minds, might cause one to go into the civil and another into the military service; would it not give them a better feeling towards each other?

I understood the question to apply to keeping them together after a selection had been made for civil and military purposes, which I think would be highly disadvantageous.

5624. Lord *Wharncliffe.*] The difficulty you stated, in the way of keeping them together, was, that they required different courses of instruction. Supposing you could provide different courses of instruction at the same institution, would there be any disadvantage in educating the two branches of the service at the same institution?

I think a very great disadvantage.

5625. In what respect?

Because we should be obliged to treat them in a different way; we have the cadets under military discipline.

5626. Supposing that at any institution, such as Addiscombe or Haileybury, it were possible to provide in the later stages the separate courses of instruction necessary for the two branches of the service, would it not be an advantage to bring the candidates for the two services together into the same institution, and to separate them after their education is finished?

I see no objection to that, up to a certain point.

5627. Lord *Monteagle* of Brandon.] Supposing that a scheme were devised by which the candidates for the civil and military service were both educated together, so long as the course of instruction was such as could be considered common to both parties; and supposing an examination then to take place, by the results of which the destination of those candidates for future appointments was to be fixed, the one to civil life, and the other to military life, and that separate courses of instruction should then be given appropriate to each; do you conceive that there would be any inconvenience resulting from such an arrangement?

There would be inconvenience, if they were kept together after the examination and the distribution of their destinations.

5628. *Chairman.*] In short, you do not object to the suggestion, provided the joint education were to take place antecedently to the time at which they now enter Addiscombe; is that the case?

I should see no objection to their being nominated to Addiscombe indiscriminately, and educated to a certain point together; and then that an examination should take place, the best to be selected for the civil service, and the rest to go into the military service.

5629. Earl of *Ellenborough.*] But there could be no objection to making one of the subjects of instruction in the early period of their residence at Addiscombe, something that will be of use both to the civilian and to the soldier?

Then you must increase the time; because I think that we ought to take pupils for the civil service and for the military service after having got the education that every young gentleman ought to get; and that after that, each

Lieut.-col. F. Abbott, C. B.

10th May 1853.

should be trained technically for his profession: a military man should be trained in military science; a civilian should be trained, in my opinion, in jurisprudence, political economy, and such matters. I think the two are so distinct that I should not wish to see them joined.

5630. Is there anything that is learnt in the first year of a young gentleman's residence at Addiscombe that would not be useful to him if he was destined afterwards to the civil service?

I should say that he would not learn anything that would not be useful to him in after-life; all that he would learn at Addiscombe would be useful to him in the civil service.

5631. And especially all that he learnt in civil engineering and in military drawing?

Decidedly.

5632. And in mathematics?

Yes.

5633. Lord *Monteagle* of Brandon.] Do you see any reason besides the one which you have stated, namely, the difficulty of exercising military discipline over civil students, that would form any strong impediment, in your eyes, to educating the two branches of the service together?

Nothing else occurs to me at present; but it seems to me that where they are set apart for different professions, one of which is considered decidedly superior to the other, there would always be heart-burnings and unpleasant feelings.

5634. Earl of *Ellenborough*.] Do not you think that one great advantage of educating them together is, that it would tend to put an end to that feeling of superiority which is now entertained by the civil service?

I do not think that feeling exists to a great extent; I have not met with it.

5635. Lord *Monteagle* of Brandon.] Do you not think that the giving a practical direction to their scientific pursuits by your Addiscombe course, so as to enable the students at Haileybury to know something of the practical application of the scientific matters which they learn, would be a great benefit to the civil servants?

I think I have answered that question in the affirmative; I think it would, decidedly.

5636. Earl of *Ellenborough*.] Considering the various political and administrative appointments which military men frequently hold in India, would it not be an advantage to them, with a view to their holding such appointments, to be acquainted with political economy, and even with the principles of jurisprudence?

Most assuredly.

5637. Have not many of them more extensive jurisdiction in their administrative appointments than falls to the lot of most civilians?

In many cases.

5638. Would it not be advisable to give to every gentleman going to India, who may be placed under circumstances which may require him to possess a knowledge of jurisprudence and political economy, an opportunity of becoming acquainted with those sciences in early life?

It would be very advisable if they could afford the time and the money.

5639. Is it not rather an advantage to keep young gentlemen a little longer in England than they now stay, and to send them out at a somewhat later age?

That is a question that has been a great deal discussed; I think myself that the course of education is a little short upon many occasions.

5640. Do not you think that an additional year at Addiscombe, employed in the acquirement of knowledge, such as we have been adverting to, would be of more use to a young officer in after-life than a year passed in a cantonment?

Assuredly.

5641. Earl of *Harrowby*.] Are there not certain appointments to the Indian Army, what are called direct appointments, the recipients of which do not pass through any military training?

There is a certain military training required, because an examination is imposed,

posed, but they do not pass through any systematic training under the East India Company's servants.

Lieut.-col. F. Abbott, C.B.

10th May 1853.

5642. Do not they go out direct from England without any examination?
No, not now; they are upon the same footing with Her Majesty's service, and they pass through an examination.

5643. That is a late regulation?
Within the last two years.

5644. Earl of *Ellenborough.*] How many young gentlemen are there at Addiscombe now?
One hundred and fifty.

5645. Would it not be of advantage to increase the number considerably, and to give it more the character of a public school by adding those from Haileybury, who are usually from 70 to 90?
I should be averse to mixing the two after their distinction had been decided.

5646. In the first instance they would not belong either to one service or to the other; but a young gentleman would be sent to Addiscombe on the assumption that it was perfectly uncertain whether he was to become hereafter a civilian or a military man; that would be determined by the examiners after a year and a half?
Precisely. I understand the suggestion to be, that they should enter upon an equal footing, and be placed in the civil service, or in the military service, according to their attainments.

5647. During the first year or year and a half they would be instructed, not merely in those sciences with which it is absolutely necessary that a soldier should be acquainted, but also in some of those sciences which may be useful to a civilian, and which a military man placed in a civil situation, as he may be in India, would likewise require; for instance, political economy, and the principles of jurisprudence; do you see any objection to that?
Simply this, that it would require a very enlarged course of education; and out of the great number that come, I suppose not one in 10, or one in 20, would ever take to the study of such dry subjects as political economy and jurisprudence.

5648. Earl of *Harrowby.*] Would they not, with the prize of a civil appointment before them?
Some few might; but it requires a previous training; there would be a great deal to cram into early life under 14 or 15 years of age.

5649. Earl of *Ellenborough.*] The question assumes that they will go to Addiscombe at the age at which they now go; about 16?
By the system in force in all those colleges where there are certain prizes held forth, before they come to the college they are crammed at a private school, of which there are hundreds now in existence; and I think the result of such a system would be, that Latin and Greek, and those things which make a gentlemanly mind at the present day, would be discarded for political economy, and subjects that were to gain prizes at the military college.

5650. At any rate, they would all feel that they went there upon the same terms and had the same chances of success, and they might all be crammed in the same way?
Exactly; they would all be upon an equal footing, no doubt.

5651. Lord *Monteagle* of Brandon.] Is there much of that species of cramming in preparation for the preliminary examination before admission to Addiscombe?
A great deal; a cadet has hardly any chance of getting on at any of the military colleges unless he is previously crammed. It is a hard word to apply to it. I may call it "taught technically."

5652. Might not the course of instruction at the early period partake of a common character, that would be useful alike in the training of civil and of military servants?
There is no distinction between the first and the last terms at Addiscombe, except

Lieut.-col. F. Abbott, C. B.

10th May 1853.

except that they have to begin at the beginning of each science; but they study all the sciences which I have mentioned, such as mathematics and geometry; they are not allowed to skip over any subjects; but men that come with a great knowledge of mathematics of course run a-head of the others. But all are obliged to go from the beggining to the end straight through.

5653. Are many of your candidates familiar with the calculus?
Many that come have gone through the calculus, both differential and integral.

5654. Earl of *Ellenborough.*] Do not you sometimes find that those who have been so crammed before their arrival distinguish themselves very much at the first examination, and afterwards fail at the second?
I have not found it so. We generally find, that after the first examination, which takes place at the end of six months, those who are then placed at the top, generally speaking, keep their places to the end.

5655. Is the number of officers under your tuition at Addiscombe sufficient to supply the vacancies in the army?
More than sufficient to supply the vacancies in the scientific branches, but not in the infantry.

5656. Lord *Monteagle* of Brandon.] How many go from Addiscombe, on the average, every year?
About 75.

5657. Lord *Elphinstone.*] Would it not be of advantage if all the candidates for military commissions in India were educated at Addiscombe before going to India?
It would be of advantage.

5658. Lord *Mont-Eagle.*] Do you admit any pupils who are not designed for the military service?
A director has the power of giving a nomination to Addiscombe, and after that, he may remove his son, and send him to Haileybury, and that is sometimes done.

5659. Earl of *Ellenborough.*] So that, in point of fact, he makes his son go through the process of which we have been speaking, as that which should be followed in all cases?
It is so in those instances.

5660. Earl of *Harrowby.*] What proportion of those who go out to India in the military service pass through Addiscombe?
I could not state that particularly; I believe it is all reported from the India House.

5661. Lord *Mont-Eagle.*] Do you know whether those who have had that double education have been particularly distinguished in India?
I think a son of Mr. Tucker's has made a very excellent civilian; and Mr. C. B. Thornhill, of Shajehankoon, was very much distinguished in his profession.

5662. Those are two that went through that double course?
Those are two who I know went through that double course; there are others, but I do not at this moment recollect their names.

5663. Lord *Elphinstone.*] Is the expense of the education at Addiscombe the obstacle to sending all the cadets there before they go out to India?
I should think it is.

5664. Lord *Monteagle* of Brandon.] What is the expense?
It costs about from 125 *l.* to 130 *l.* per annum.

5665. Is that the cost to the pupil, or the total expense of the maintenance of the establishment, estimated *per capite?*
I should think it costs about that to the student.

5666. Earl of *Ellenborough.*] Do you mean only for his expenses at the college, or including his expenses at home?
Only at the college; that includes military clothing, and books, and everything.

5667. Then the total expense for a young gentleman would probably not be less than 170 *l.* or 180 *l.* a year?
That would depend upon his parents' indulgence.

5668. Lord *Wharncliffe.*] What vacations have you?
We have two vacations of six weeks each.

5669. Earl of *Ellenborough.*] Do you teach practical gunnery?
Simply loading and firing field-pieces, with a little mortar practice.

5670. You drill them?
Yes.

5671. They go through all the regimental exercises?
To a certain extent; the time does not admit of their being taught battalion movements upon any great scale; they learn the sword exercise, the manual exercise, and the platoon exercise; now we teach them fencing and the broad sword.

5672. Do not you think that it would be of advantage to pass all the officers of the army through Addiscombe?
It would be of advantage to the officers, undoubtedly.

5673. And therefore to the service?
And therefore to the service.

5674. Lord *Mont-Eagle.*] Every officer of engineers must go to Addiscombe?
Yes.

5675. And every artillery officer?
Yes.

5676. Lord *Wynford.*] You have stated that the present number of students at Addiscombe is 150; is that a larger number than the number at Sandhurst?
They have 180 at present at Sandhurst, and they can take in 360 when necessary.

5677. But the expense is greater than at Sandhurst?
I think, if you were to go into particulars, you would find that it is not much more expensive than at Sandhurst.

5678. Is it not much more expensive on this account, that a certain number of students at Sandhurst are taken upon a much reduced scale in consequence of being the sons of officers?
But others are taken upon a more advanced scale; 100 *l.* is what each parent pays to us.

5679. Earl of *Ellenborough.*] Was there not an alteration made in the terms of payment about 24 years ago at Addiscombe?
Great alteration.

5680. What was the sum originally?
I cannot say, except from general recollection; I think they paid about 50 *l.* a year; that was many years ago.

5681. Was not the sum raised in order to make Addiscombe pay its own expenses?
To a certain extent, it was, I know; it was too heavy a charge upon the Company, and they raised the scale of payment to reduce the charge; I do not know that it was intended absolutely to make the institution pay its expenses.

5682. Do you think that the parents of the young gentlemen are more likely to feel the expense than the Government of India?
That is matter of opinion, I think.

5683. Is it not a disadvantageous system which excludes officers from scientific instruction before they go out to India?
Every officer ought to have scientific instruction; but they can have that scientific instruction at private schools at present.

5684. Do not you consider that the education which you give at Addiscombe is better than they would receive in ordinary private schools?
Certainly.

5685. It

Lieut.-col. F. *Abbott*, C.B.

10th May 1853.

5685. It would, therefore, be advantageous that they should rather go to Addiscombe than to private schools?

Certainly.

5686. Is there not advantage in making them acquainted with one another in early life, when they are to serve together during the remainder of their lives in India, and in creating the friendships between them which originate in a great public school?

I do not quite enter into that feeling; the number that would be at Addiscombe together at the same time would be so small, in comparison with the number of persons that a man would meet with in India, that I do not think any great importance is to be attached to friendships of that sort; a man during his service in India must, under any circumstances, meet with a vast number whom he has never seen, even if we extended the college so as to embrace the whole of the services; so that it would only effect that object to a very limited extent.

5687. If you made it absolutely necessary that all officers destined for the service of India should be educated at Addiscombe; and if to those were added all those who are afterwards to be turned over to the civil service, would not that form a large number of persons, probably not less than 400 or 500?

Even that would be very small in comparison to the thousands they meet with in India whom they would never have seen.

5688. If the period of instruction were extended to three years, would not the number of persons who would thus become acquainted at the institution soon become very considerable?

I will state a case: I was educated at Addiscombe; I was there with a brother of mine; we went out to the same Presidency, in the same ship, and we never saw each other afterwards for 10 years.

5689. Was your brother attached to a regiment?

He was in the Artillery.

5690. Lord *Monteagle* of Brandon.] You spoke of a preliminary examination on entering Addiscombe; before what examiners does that take place; is it within Addiscombe, and conducted on behalf of the establishment itself, or is it by any other authority appointed independently of Addiscombe?

It is at Addiscombe, conducted by the Addiscombe Professors under me; I preside at the examination.

5691. Do you conceive that that is likely to be more satisfactory in its results than if you had a separate examination as is provided for the civil service, distinct and apart from Addiscombe, and of which nothing but the result is communicated to the college?

I think it very satisfactory as it is now, because we do not pluck or spin them (or whatever term may be used); they may come as often as they please, provided they do not exceed the regulated age of 18.

5692. Earl of *Stradbroke.*] May they apply once a month till they get in?

If a boy does not pass, the Professor says, "Come in six months," or "Come in five months," or "Come in four months," according to his qualifications.

5693. Lord *Mont-Eagle.*] Do not they occasionally go to Addiscombe after having failed in the civil service, in consequence of not passing the requisite examination?

I have not been aware of a single instance since I held the command; I have never heard of an instance.

5694. Earl of *Ellenborough.*] Is the examination of a gentleman with a direct nomination as severe as the examination of those who pass through Addiscombe?

No; it is not much more strict than our own preliminary examination.

5695. Therefore, not only those who find it inconvenient to pay so large a sum as is required for a pupil at Addiscombe, but also those who may think that their sons are not very distinguished in literature and science, would prefer a direct nomination to passing through Addiscombe?

They would prefer a direct nomination, certainly.

5696. Lord *Monteagle* of Brandon.] As far as that distinction extends, is not the effect of the direct nomination to expose the service to the chance of getting a less qualified class for commissions?

Cæteris paribus, of course they might get a less qualified class, if they do not insist upon the same standard of merit; but it does not necessarily follow that that must be the result.

5697. Earl of *Ellenborough*.] Does your knowledge of persons enable you to say whether the officers that have been selected for civil and political appointments in India have generally been educated at Addiscombe, or have had direct nominations?

I could not say what the proportions are; I know that a good number that have passed through Addiscombe have been appointed to political situations: two of my own brothers are instances; Sir Henry Lawrence is another; his brother, Colonel St. Patrick Lawrence is a fourth; and I could name many more.

5698. Are you aware where Colonel Dickson was educated?

I am not aware whether he went out previously to the formation of Addiscombe; but he is an Artillery officer, I believe, and therefore he was educated either at Addiscombe or at Woolwich.

5699. Lord *Wharncliffe*.] Do you know any military officers who have been so employed who were not educated at Addiscombe, but went out under direct nominations?

A great many have got political appointments.

5700. Earl of *Ellenborough*.] Can you state whether many have had administrative employments?

The administrative and the political are so blended that it is difficult to say. Colonel Dickson was as political as he was administrative in his functions, and Sir Henry Lawrence the same.

5701. Was Colonel Sutherland at Addiscombe?

I think not; I think he went to India before Addiscombe was formed.

5702. Colonel Sleeman?

He was not at Addiscombe, I should say, but I have no means of knowing.

5703. Have you ever considered whether it would be advantageous to unite in education the officers intended for the Queen's Service and those intended for the service of the Indian Government?

I should say that it would be very disadvantageous so far, that it would make the colleges so very unwieldy; I think it quite enough to manage 150 youths at that age.

5704. In fact, the education at Chatham is an education indiscriminately for both?

The scientific branches are brought together; there is no distinction made at Chatham between one and the other service.

5705. Lord *Wynford*.] But both classes are officers?

Yes, they have their commissions; they are officers.

5706. Lord *Wharncliffe*.] Have you ever remarked any thing like a feeling of envy or jealousy towards those who are devoted to the civil service amongst the military students?

Not amongst the students; the question is never canvassed, I think; but I should not hear it if it were. I do not think there is a thought in Addiscombe about the civil service; they know that they are sent there for a particular object, and their aim is to get prizes, viz. to get into the Engineers or the Artillery.

5707. Is it necessary for a pupil to declare beforehand that he is a candidate for prizes?

No, they are all upon the same footing; the prizes are given according to merit.

5708. Lord *Wharncliffe*.] There is nothing in the examination at Addiscombe analogous to the practice of Oxford and Cambridge, of declaring beforehand when a student is going up for honours?

No, they would be laughed at.

Lieut.-col.
F. Abbott, C.B.

10th May 1853.

5709. *Chairman.*] Is the idea of going out to [illegible] the young gentlemen at Addiscombe?

To nine out of ten it is.

5710. Earl of *Ellenborough.*] With an equal chance in either [illegible] the military service of obtaining political appointments, should you say that it is a very great object to a young man to be placed in the Engineers or the Artillery?

I consider that the Engineers Department as very little inferior to the civil service in India.

5711. In emolument?

In emolument, and in the style of service: there is great room for professional distinction. It is an employment of a scientific nature during the whole course of one's life; there are no moments of idleness.

5712. But the officers in the Engineers are not so often employed in the Political Department in consequence of the paucity of their number?

Not so often; but we have instances.

5713. And the Artillery officers also are not so commonly employed in the Political Department, in consequence of the paucity of their number?

I should say that they are not; taking them numerically, they have not so large a proportion as the infantry have of civil employment.

5714. Are not you aware that on one occasion, at least, the Commander-in-Chief has requested that artillery officers might be sent back to the service?

I am not aware of it.

5715. In point of fact, is there not great practical inconvenience in being obliged, if there is a prospect of having a siege, to take away the engineers who are superintending the works of roads or canals in 13 or 14 different places?

There may be inconvenience in that; but I do not think it counterbalances the advantage of having the military engineers applied to civil works. What could we do with them in time of peace? We have 11 months of peace to one of war: what would you do with the engineers during the time of peace? Now you turn them to advantage.

5716. Lord *Wharncliffe.*] Is not it a great impediment to the prosecution of any useful works, that the officers conducting those works should be constantly liable to be called off?

Of course for the time being it causes an obstruction, but their absences are temporary.

5717. Are you not aware of the fact that the Indian Government has mentioned it as one of the difficulties attending the execution of public works in India, that they have not enough engineers?

I am aware of that; I know it practically.

5718. With a view to the internal improvement of India, would it not be advantageous that there should be a larger supply of well-educated engineers, whether military or civil?

Decidedly.

5719. Lord *Elphinstone.*] Can appointments in the engineers be held by officers of the line?

The Civil Engineer Department is practically open to the line, and it is filled up very much from the line, because there are not officers enough of the engineers.

5720. Lord *Monteagle* of Brandon.] Is the great trigonometrical operation in India carried on under military engineers?

Almost entirely by military engineers in the higher branches; they have uncovenanted assistants, calculators and such persons, and a very large train of native assistants.

5721. But the great direction of the triangulation must necessarily go on under the control of men of a superior class?

Decidedly; it is not always given to engineers; the Surveyors-general, till of late years, have generally been officers of the line or of the artillery; the

present

Lieut.-col. F. Abbott, C. B.

10th May 1853.

present Surveyor is [illegible] officer of engineers; his assistants are, many of them, engineers; some belong to the infantry.

5722. Earl of *Ellenborough.*] Where have those infantry officers obtained their instruction; at Addiscombe?
I am not aware, because I do not know precisely those who are in it.

5723. Lord *Wharncliffe.*] Does it often happen that the pupils at Addiscombe are unable to pass the final examination?
Very seldom indeed, because we have three steps; the best we take for the engineers; the next best for the artillery; and there is an inferior examination which every man of decent abilities ought to pass for the line.

5724. Very few fail to pass that?
Very few.

5725. Earl of *Ellenborough.*] When an engineer is first sent out, he joins the sappers and miners?
Yes.

5726. How long does he remain there?
According to circumstances, as he is wanted; sometimes six months; sometimes twelve.

5727. What do they do there?
Just as they do at Chatham, except that they have no pontooning.

5728. Earl of *Harrowby.*] Are there any facilities for further instruction in the theoretical engineering in India?
There has not been any provision made for it till of late years. A Civil and Military College has been just established at Roorkhee, on the Great Ganges Canal; and there the officers may go, as they do now, to the higher department at Sandhurst, to learn the higher branches of engineering and military science.

5729. Lord *Wharncliffe.*] Is that in operation?
It is in operation now.

5730. Lord *Colchester.*] Does every cadet who is equal to pass the examination which is required for going into the Artillery or the Engineers, necessarily obtain a commission in one of those branches, or only such a number as there may be vacancies for?
For the scientific branches only such a number as there are vacancies for; the rest go of necessity to the line.

5731. Then it is possible that there may be cadets who have passed an examination which would have qualified them for the Artillery or the Engineers, who are yet obliged to take other branches of the service, because there are not vacancies in those superior departments?
That often happens.

5732. Earl of *Ellenborough.*] Is not there this convenience in a direct nomination, that a gentleman may have that given to him when he is too old to go to Addiscombe for admission?
Yes, four years afterwards; they cannot be sent to Addiscombe after 18; with a direct nomination, they may go out to the age of 22.

5733. Is there not this further advantage to officers who have been in the Queen's Service, that they are allowed to enter at a still higher age?
I think, up to 25, if they have served a year in the line, and, I think, in the militia.

The Witness is directed to withdraw.

Lieutenant-general Sir CHARLES W. PASLEY, K.C.B., F.R.S., is called in, and examined as follows:

Lieut.-gen. Sir C. W. Pasley, K.C.B., F.R.S.

5734. *Chairman.*] WILL you be so good as to state your rank in the Royal Engineers?
My rank is Lieutenant-general in the Army, and an officer of Engineers unemployed.

Lieut.-gen. Sir C. W. Pasley, K.C.B., F.R.S.

10th May 1853.

5735. You have been frequently requested by the Court of Directors to conduct the examination of the pupils at Addiscombe?

That has been my duty since the year 1840, when I had the honour of being appointed their Public Examiner and Inspector of Studies at Addiscombe.

5736. Earl of *Ellenborough*.] You succeeded Sir Alexander Dickson?

I did.

5737. Have you made any alteration in the mode of carrying on the education at Addiscombe since you have been examiner there?

I have made a number of what I considered improvements.

5738. Will you have the goodness to state what they are?

In the first place, when I was appointed Public Examiner there, all the candidates for admission were required to understand common arithmetic well, as far as decimal fractions inclusive, and the extraction of the square and cube root. Those in the fifth class, the lowest class, afterwards went through common arithmetic again, which was a waste of time if they were properly qualified when they passed their previous examination. I abolished the arithmetic as a branch of study, and the master who had charge of teaching it resigned soon after, because he did not understand algebra or geometry. Then I found that the examinations in those subjects which required demonstration had always been conducted by my predecessor *vivâ voce*, and they were so at first by me. The number of cadets of the first class examined at each half-yearly examination is about one-fourth of the whole number, it may vary between 30 and 40; I think it approaches nearer to 40 on the average. In examining them I was obliged to take them according to their proficiency; those who were examined for the infantry did not go so high in the course of mathematics as those who were candidates for the artillery: again, the qualifications in mathematics for the engineers were still higher than those of the artillery. I found the greatest difficulty in managing those examinations, because in examining part of them *vivâ voce*, whilst others were solving questions in algebra, heights and distances, mechanics, &c., that I had given them in writing, their comrades were prompting or assisting those who were the least qualified. In short, there was a great deal of fudging at that time, which I almost despaired to get rid of. But afterwards, on consulting with the professors of mathematics and fortification, who were men of great talent and zeal, and eminently well-qualified in the respective studies of which they had charge, I proposed a plan that was approved by the Military Committee and the Court of Directors, namely, that all the cadets should be examined half-yearly; to begin with arithmetic and the lower branches, and to go on to the higher branches: those who were in the fifth or lowest class had only begun algebra and geometry; but the whole of the cadets, even the best qualified, were examined in those branches at the same time in their respective class-rooms; then those that had gone higher were all examined simultaneously in the same studies; so that there was no communication between them, and they were all examined by questions in writing according to the system at Cambridge, which usually occupied a number of days, and thus there could be no fudging; because all the best qualified cadets were under examination themselves after the others had been examined as far as their knowledge extended: this put an end to the practice of assisting each other, an abuse which is liable to prevail at all such institutions, and which did prevail at Woolwich academy when I was a cadet, but has been abolished since; thus the system of general half-yearly examinations has produced the best possible effect. But there was another difficulty to be got rid of: when you collect a number of young men together for the purpose of instruction, there is always a proportion of them who have considerable talent and application combined; and if they have not both, they may have enough of one of those qualities to bring them on well. The best of the cadets at Addiscombe were always well-qualified, even before the simultaneous half-yearly examinations were established, though there were some cadets who competed for the Artillery only without attempting the course prescribed for the Engineers. However, those also were as diligent as one could expect them to be. But there was another set who despaired of the Artillery and Engineers, and they did as little as they possibly could; in short, they just studied no more than they thought would prevent them from being removed from the institution; and I found that there was no

means

Lieut.-gen. Sir C. W. Pasley, K.C.B., F.R.S.

10th May 1853.

means of getting the better of such idleness except by rusticating them; because there is a discipline of education as well as a discipline of conduct, and the former cannot be preserved without rustication or some other punishment. The system at Woolwich is, that there is a probationary examination at the end of a year, at which those who fail are sent away altogether; and at Addiscombe the first term also was originally a probationary term, and it was held out that those who were deficient at the end of their first term should in like manner be removed altogether from Addiscombe; that appeared to me to be rather a hard case, and I recommended that they should be rusticated for six months, instead of being removed; but those cadets who had been very idle in their first term would always pledge themselves to be very diligent in future, and made such fair promises that the masters of the lower class very often believed them: I found, however, that cadets in their second, and even in their third, term would be very idle, and therefore I recommended the Military Committee who had charge of Addiscombe to establish a new rule, that in case any of the cadets were reported by me to have been very idle in their second or third term, and the Court should be satisfied that my report was a just one, then they should be rusticated. I always corroborated my report by producing their work at the written examinations, which proved clearly that they were incompetent, for some of them would scarcely do a single question right in the subjects which they ought to have been learning during the term: these measures together have produced a very beneficial effect upon their diligence, for I have always thought that the great object of any system of education was not to bring forward merely some young men of splendid talents, as has been the case at the public schools which have produced some prodigies of this description, but to make every pupil learn as much as his abilities would permit, which can only be done by some system of looking well after those in the lowest classes. After that was established, I found that the scale of qualifications for the various studies in mathematics, fortifications, &c., was reckoned by very small numbers. About three years after I was appointed, I recommended that mathematics and fortification should be counted by 150 instead of from 1 to 30; that Hindostanee should be reckoned from 1 to 60 instead of 1 to 12; and I recommended an increase of from 1 to 20, 30 or 40, instead of from 1 to 8 or 12, for other studies; in short, instead of those small numbers we adopted higher numbers: the object of that was to be able to discriminate more justly between the qualifications of individuals, instead of having five or six equal; this enabled us to ascertain their respective merits in study more clearly. Finding that Hindostanee was neglected very much, from the reports of the Professors, who made continual complaints of the idleness of the cadets in that study, I had it raised to a higher number, at their request: a further change was afterwards made, so that the numbers for comparative merit between the different studies that now prevail are, 150 for mathematics; for fortification, 100; for Hindostanee, 80; for military drawing, civil drawing, French and military surveying, each 40; and for Latin, 20. Latin appeared to be the least useful qualification, because there is nothing in the way of modern fortification and warfare that is to be learned from Roman authors, though it is a great stimulus to young soldiers to read of Cæsar and Hannibal, and other great warriors of antiquity; but a person who wishes to study engineering, whether civil or military, the art of war or any other art or science, must have recourse to French authors, though French is of very little use as a colloquial language in India, I believe of none; French, therefore, was still kept high, and Latin low, as they were from the first.

5739. Under the system you established, were any gentlemen turned back altogether, and dimissed?

There was only one, I think. At first it was the rule, as I mentioned, that those who made no improvement in their probationary term (the fifth class) were to be sent away; but afterwards, as I mentioned before, I proposed that they should be treated more leniently. I am sorry to say that this new rule did not exist at the period when I removed one cadet altogether, because I discovered afterwards that he was a young man of very good abilities indeed, very much above par, but that he had been incorrigibly idle: however, I believe he got a direct infantry cadetship, so that it was not much injury to him in the end.

5740. Was

Lieut.-gen. Sir C. W. Pasley, K.C.B., F.R.S.

10th May 1853.

5740. Was he not subjected to some examination when he took up the direct nomination?

In those days, in the case of direct nominations, there were very few questions put to any candidates. If asked what sort of education he had, the answer might be, "chiefly mathematical," or, "chiefly classical;" and if he could write this without any errors in spelling, he was approved.

5741. Earl of *Stradbroke.*] In the case of a direct nomination, that is now altered?

Yes, it is now altered. After officers of the line in Her Majesty's Service were required to pass an examination for commissions in mathematics, fortification, &c., the East India Company immediately adopted the same system.

5742. Earl of *Ellenborough.*] If it were determined to send young gentlemen to a great general college, Addiscombe, for instance, destined to prepare for service in India, but not specifically for either the military or the civil service, and to give them, in the first year of their probation at that general college, a common education, which should fit them, generally, either for the civil or for the military service, and at the same time should afford an opportunity of discerning the bent of a young man's mind, and whether it was likely that he would excel in the civil or the military profession, do you think there would be any difficulty in framing and carrying out such a course of education; with this further provision also, that it would remain with the examiners, at the end of a period to be fixed, to decide upon a general view of the capacity, and industry, and acquirements of the young man to which department he should be destined?

When I obtained my first commission in the Royal Artillery, in December 1797, before I was transferred to the Engineers, as was then the custom of the service, the course of education at Woolwich was very low indeed, and so was that of the junior department of the Royal Military College, afterwards established at Great Marlow, and since removed to Sandhurst: but in the course of 10 or 12 years they became more strict, and by degrees the education at Woolwich and at Sandhurst has been very much improved. The present infantry course at Sandhurst and at Addiscombe are much superior to the artillery and engineers' courses when I was a cadet at Woolwich, which had been cut down without being methodized, owing to the great demand for officers of the Ordnance Corps at the commencement of the war with the French Republic in 1793. But in proportion as the education at Woolwich and at Sandhurst improved, and after Addiscombe was established, there arose what were called cramming schools, which literally were so at first; but by degrees they became very good indeed; and it is no longer fair to call them cramming schools. There was an excellent school of that sort to which I sent my own son, at Wimbledon, kept by Mr. Stowton, which still retains its character under another head master; and there is one now at Cheltenham, what they choose to call a College, though it is only a school, for they take very young boys. It is just the sort of school which I think is better calculated for the purpose alluded to, than what are more properly called Colleges, such as those at Oxford or Cambridge. I think that the Cheltenham school is particularly well adapted for ascertaining whether young men are likely to excel in the military profession or the church, or in any other. I do not know of a better preparatory school than Cheltenham College; and I have sent all my young relations there when their friends have consulted me on the subject.

5743. Do you know what system they pursue there, so as to obtain a knowledge of the bent of a young man's mind?

They teach classics, mathematics, the French, German and Oriental languages, drawing, fortification, &c. at the schools I have mentioned, namely, Cheltenham College and the school at Wimbledon; and I believe there is another school of the same sort at Kensington, called Kensington College; and there are other respectable schools also, where they prepare their pupils either for Woolwich, for the Universities, or for Haileybury or Addiscombe; whatever appointment a young man has a chance of obtaining, they teach what will qualify him for it, on being made acquainted with the wishes of his friends.

5744. Lord *Monteagle* of Brandon.] How far do they carry their mathematical teaching at Cheltenham?

They carry it on as far as the end of the Addiscombe course; viz. mechanics, conic

conic sections, the theory of equations, and expansion of series, and the differential and integral calculus.

5745. Lord *Wynford.*] Is that a proprietary school?

Yes.

5746. There is no compulsion; boys may be idle there if they please?

I can only say that I had a young relation, the grandson of a lady, who is my first cousin in Scotland, and when I was there I found that he had made little progress: he had been at Edinburgh, at what was considered a very good school, but had been very idle: he had a good deal of ability, but had done very little. I therefore sent him to Cheltenham College, where he soon improved, and at the end of a year and a half he was admitted with credit into the Royal Military Academy at Woolwich; I do not think he could have passed the examination there if he had not previously gone to Cheltenham.

5747. Lord *Monteagle* of Brandon.] At what age do they receive them at Cheltenham?

I think at about 10, 11 or 12.

5748. Earl of *Ellenborough.*] Then they retain them till they are 16 or 17?

Yes, or even longer.

5749. You have had many young gentlemen at Addiscombe who have been educated at Cheltenham, have you not?

Yes, a good number.

5750. Do you generally find them much superior to others?

I have found, generally, that they stood high. I do not think that proprietary schools are always well managed by any means; but this is remarkably well managed.

5751. Do you think it would be at all difficult to establish a similar system at Addiscombe to ascertain a young man's disposition and his genius, and then to direct his studies accordingly, deciding at a particular period of his education whether he is to go to the civil or to the military service, and leaving it to the examiner to decide that?

I do not think that would be advantageous, though it may occasionally have been done; the chairman for the time being may have given a Haileybury appointment to one of the most distinguished cadets at Addiscombe; but it has been very seldom done; I only recollect it once.

5752. Lord *Monteagle* of Brandon.] Do you remember the name of the cadet who obtained that nomination to Haileybury?

I do not.

5753. Was it given as a general prize open to competition?

No, it was not; the chairman was very much pleased with his qualifications, and gave him the appointment. Whether he distinguished himself at Haileybury as much as he did at Addiscombe, I cannot tell; I think it is better to have them distinct.

5754. Earl of *Ellenborough.*] Do you frequently find, in the course of the examination, some young gentlemen who may not appear to have particular aptitude for military science, and not any disposition to belong to the army, but at the same time they may show very considerable civil qualities, and appear likely to be distinguished servants of the public in that department?

The studies at Addiscombe are chiefly devoted to the military profession, and I have no doubt that the young men who distinguish themselves there might distinguish themselves in civil employments in various situations; but it appears to me that it would be better not to have any mixture of that sort. All those who come to Addiscombe wish to have commissions. The same interest that gets them appointments at Addiscombe might get them appointments at Haileybury.

5755. But there are fewer appointments to Haileybury than there are to Addiscombe?

Yes, and they are much more prized.

5756. So that it requires more interest to get an appointment at Haileybury?

It does.

Lieut.-gen. Sir C. W. Pasley, K.C.B., F.R.S.

10th May 1853.

5757. Would there not be advantage in educating together those who are destined for the civil and military services?

I do not think so; I do not think the system of education at Haileybury would answer at all at Addiscombe. At Addiscombe their whole time is occupied; they have no themes given them to compose, or other subjects of study to prepare in their own rooms; in short, they have no spare time to themselves, except what is just sufficient for exercise and recreation.

5758. If Addiscombe or any other place were made the place of education for persons destined for both branches of service, the military and the civil, of course it would be necessary to alter the course of instruction in the first year, and to make it common to both?

I am afraid the military profession would suffer by that.

5759. You never were in India yourself, were you?

No, never.

5760. Lord *Monteagle* of Brandon.] Referring to what you have stated as to the importance, not only of instruction but also of discipline in education, do you conceive that you could obtain the same evidence of qualification, on the part of the young men, by a mere examination open to all the world, that you now do by methodized and systematic instruction at an establishment like Addiscombe?

My opinion is, that, to educate young men for the military service, there ought to be institutions such as Woolwich, Addiscombe and Sandhurst; and that if you trust to young men qualifying themselves, you never would obtain so good a result; the reason is that military education is not taught generally in the schools in this country. I have read a number of suggestions in the newspapers about throwing the military profession open to young men from the Universities; but the men at Oxford and Cambridge generally go there too old for commissions as ensigns or second lieutenants, and their time whilst there is left too much at their own disposal.

5761. Earl of *Ellenborough*.] Have you found that young gentlemen, after rustication, return better than they were when they were sent away?

Much better, because the influence of their friends acts powerfully upon them during this period.

5762. Do they make as much progress in their studies during their rustication as they would have done if they had remained?

If they had been allowed to remain they would have done little or nothing; but I have always found them more diligent after returning.

5763. Have you at any time, under the arrangements now in force, been compelled to send to India a gentleman who appeared to have no aptitude for the military service, and to be unfit for it?

There are many young men who dislike study altogether; they cut no figure at Addiscombe, nor at any other place of instruction, but when they are thrown into active service in war, or when responsibility comes upon them, then they show that they have talent which lay dormant; there are some who will not study more than just enough to escape being sent away, who afterwards may turn out very distinguished officers; they may be possessed of courage, decision and sound judgment.

5764. Is it not sometimes the case that a young gentleman who does not distinguish himself at an examination may yet, from his personal qualities, have great influence over his schoolfellows?

He might, because idleness is contagious, and unless it were punished by the temporary removal of the defaulter, it would have a very bad effect.

5765. Earl of *Stradbroke*.] But you do not generally find that those who are idle have so much influence over other young men of their own age as young men who are studious?

By no means, supposing that both are equal in personal qualities; but the idle are likely to abuse their influence by leading others into mischief. I ought to have mentioned that besides the examination of the candidates appointed to the engineers, artillery and infantry from Addiscombe since I received my appointment in 1840, the Court of Directors determined, at two several periods, to

increase

Lieut.-gen. Sir C. W. Pasley, K.C.B., F.R.S.

10th May 1853.

increase their artillery very much, and they gave direct artillery appointments on both occasions, first in 1841, and afterwards in 1845 there were a number of such appointments, I believe nearly 100 in all, and the candidates were examined by me; I thought it a bad arrangement, but, however, it was considered absolutely necessary, and what is a matter of necessity must be adopted.

5766. Lord *Colchester*.] Were not several of the candidates cadets from Woolwich?

There were a few.

5767. Earl of *Ellenborough*.] How did they go through their examination generally?

I was obliged to examine them more leniently; it was not in their power to get through a strict examination; therefore, if I found them deficient when they first came before me, I allowed them a second trial, and was less particular with them than I would have been in examining cadets who had had the advantage of Addiscombe.

5768. But there was then, and is now, a very great dearth of artillery officers?

I believe there was then, and I understand there may be now, though I have not been told so officially.

5769. (*Chairman*.] Is there any other point upon which you can usefully give the Committee information?

I may mention that in the year 1848, after the system of written examinations had been adopted for several years, I requested all the professors to draw up a detail of their respective modes of conducting their half-yearly examinations, and, on receiving their reports, and discussing the subject of each, I drew up a general statement of the whole, and submitted it to the Military Committee, who approved of it, and sanctioned its being printed in this form—[*producing a pamphlet*]. The first article of it was, that if after the experience of some years it should appear advisable to make any improvement or any modification, then the professors and I jointly, *if we agreed in opinion*, might do so, but not otherwise, without reference to the Military Committee; and we have accordingly made several modifications since, generally suggested by them, but occasionally originating with me. Sometimes there has been a temporary difference of opinion, but on the whole this sytem has worked exceedingly well. This is the same printed statement first published, with a brief supplement added afterwards. A new edition is now about to be prepared, in which we shall make some slight additional changes.

5770. Earl of *Ellenborough*.] Does it rest solely with you, when you examine the cadets, whether they shall be put into the Infantry, or the Artillery, or the Engineers?

I ought to observe, that the written examinations are conducted and the questions are given out to them by the professors of the several branches. The Hindostanee I have nothing to do with; but their solutions of the questions in fortification and mathematics come under my province, and their drawings are also examined by me, for sometimes the cadets are tenacious about the merit of their landscapes and other drawings, which are therefore referred to me to examine, and compare the value assigned to each by the teachers. In the mathematical examinations there are five classes, and the professor and masters draw up a list of questions in the several parts of the course in concert, generally varying their subjects after every term, and each reports what numbers the cadets ought to have in solving the questions proposed by him, according to the system followed in the mathematical examinations at Cambridge; and afterwards these reports are submitted to me, and if there is any doubt we refer to the questions and solutions of the cadets, which they enter in blank books, without being permitted to refer to any printed books, except tables of logarithms. Those who go through the Engineers' course or the Artillery course with credit are recommended for commissions in these services, and those who only go through the Infantry course are recommended for commissions in the Infantry, all being ranked according to their merit, which is judged of by their examination papers; but it might happen that there were not qualified candidates enough for the Engineers or the Artillery to fill up the vacancies in these corps.

Lieut.-gen. Sir C. W. Pasley, K.C.B., F.R.S.

10th May 1853.

corps. This, however, very seldom occurs, there being usually more candidates than the professors of mathematics and I, consulting together, choose to recommend; because some hurry into the minimum Artillery or Engineers course, without making themselves masters in the higher branches that they have attempted in their last term.

5771. Does the professor of each department fix the numbers that are to be attached to each candidate's name?

Yes, they do, according to the rules laid down, from which they cannot well deviate, for the cadets are very knowing, and if misplaced, they would remonstrate. In fact, they know their proper place as well as the professors do; but complaints of this sort, which I never discourage, seldom occur, as they know that they are treated with great impartiality.

5772. But it must depend upon the judgment of the professor how many numbers shall be given to each individual?

Yes, it does to a certain degree. The mathematical questions, for instance, are either answered quite correctly, or not attempted, or answered imperfectly. Then, supposing 20 is the value of any mathematical question, the professor may give to one cadet 6, and to another 14, and so on; and a cadet who is very badly qualified may get a certain number at the half-yearly examination, although he may not have done a single question right, because he may have been nearly right in some of them, and in others partly right.

5773. You spoke of landscapes; do they teach them to draw ordinary landscapes, or merely military drawing; sketching ground for military purposes?

They are taught military drawing, military surveying and civil drawing. The civil drawing consists either of landscapes, figures or sea views.

5774. Lord *Monteagle* of Brandon.] In all respects the system is very much the same as at Woolwich?

It is.

5775. When you adopted this plan of examination, similar to our Senate-House Examination at Cambridge, viz., by the substitution of written questions for oral examination, did you altogether abandon *vivâ voce* examination, or do you combine the two?

No, I have always had a *vivâ voce* examination also. And the examiner in the Oriental languages, Professor Wilson, in like manner has a *vivâ voce* examination after he receives the reports of the professors of Hindostanee. I always examine them verbally both in fortification and in mathematics. But I have not given so much time to this mode of examination as I would have done if there had been no previous half-yearly written examinations towards the close of each term, at which I always attend.

5776. Earl of *Ellenborough.*] Are they ever, as a part of the examination, sent out suddenly and unexpectedly to sketch ground in a military manner, so as to give an idea of the ground for military purposes?

They are taught military surveying by a very competent officer, Lieutenant-colonel Basil Jackson; but the fact is, that the time given to surveying is not sufficient to make them very perfect; they just learn so much, that if they went to India and were employed on a survey, they would do it very well after some practice, which would soon render them expert.

5777. But you know that one of the most important things is reconnoitring, and to be able, on reconnoitring, to bring back on paper a perfect idea for the assistance of the Commander-in-Chief; is that taught at Addiscombe?

They do not do that at Addiscombe.

5778. Lord *Monteagle* of Brandon.] They do it at Chatham?

They do; when they join the Royal Engineers' establishment, under Colonel Jones, with temporary rank as commissioned officers, they are then instructed in the higher branches of surveying and in practical astronomy, to qualify them for a great trigonometrical survey, and they are also practised in military sketches of ground.

5779. Earl of *Ellenborough.*] But that ability of making a sketch of ground in order to convey an idea of it to the officer under whose direction they reconnoitre,

Lieut.-gen. Sir C. W. Pasley, K.C.B., F.R.S.

10th May 1853.

noitre, may be useful to an infantry officer, or to any one who acts upon the staff at any time?

Undoubtedly.

5780. Lord *Monteagle* of Brandon.] When you made the alteration which you have described with respect to the instruction in arithmetic, by which you excluded from the Addiscombe course the lower and more elementary instruction in arithmetic, I presume that was accompanied by a strict examination in arithmetic previously to admission?

Yes; they do not work at arithmetic at Addiscombe, but they are always examined in it for fear they should forget it. Formerly they were only examined class by class; that is to say, those in the first class were examined for commissions, and those in the second and other classes were examined as far as they had gone during the term. Hence those who were anxious to get commissions in the Engineers and Artillery would work hard in the higher branches of mathematics, to obtain higher numbers with that view, but it was often found that they had forgotten the elementary parts; therefore, in the course of every half-year, all the cadets are now examined in the whole course as far as they have gone, from simple arithmetic to the differential and integral calculus inclusive.

5781. Earl of *Ellenborough*.] Is care taken that they write a good hand?

It is very difficult to enforce that. I believe that the themes and written examination papers at school, before they come to Addiscombe, rather spoil their hand than otherwise; but many of the cadets write well, and at the same time quickly, which is a very good habit.

5782. Lord *Wynford*.] Are the examinations open to the public, like the examinations at Oxford and Cambridge?

They are so far open to the public, that after the usual half-yearly written and *vivâ voce* examinations, I make a report of the qualifications of all those examined for commissions, and then a public examination takes place, at which the Chairman and Directors of the East India Company preside, which is a sort of show-off, in which I ask no questions of any cadet which I do not believe he is capable of answering. But the time allowed is so limited, that I can seldom put questions to all the cadets supposed to be under examination. I may sometimes make a mistake respecting the questions proposed to individuals at these public examinations; but having examined them all before, I know pretty well what they will be able to answer. I was very much averse to this system at first, but I know from their previous written and oral examinations, that many of the cadets at every successive public examination would have passed extremely well in any part of the course, if the Chairman and Directors could have spared sufficient time to admit of a greater number of questions being put to them promiscuously, for which they were quite unprepared.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday the 26th of May, Two o'clock.

APPENDIX.

Appendix A.

(Referred to in the Evidence of David Hill, Esquire, Question 2258, p. 229.)

To the Governor-General in Council.

Appendix A.

Para. 1. In compliance with our desire, you have transmitted with your Judicial Letter of the 9th July (No. 14) 1852, the Report of the Bengal Sudder Court, on the working of the new Rules of Practice for the settlement of the issues in cases appealed to that Court.

2. We observe that the majority of the Judges are of opinion that those Rules have been acted upon without difficulty. In that opinion, however, Mr. Jackson does not entirely concur; in particular, he apprehends that the new Rules have led to an increased admission of technical pleas, not affecting the real merits of the question in dispute; and we find that on a subsequent occasion (26th August 1852) he is inclined to attribute the increased number of Reversals by the Sudder Dewanny Adawlut in Appeals from the Lower Courts to the same cause, pointing out that in 1848 the Affirmations had been to the Reversals in the proportion of four to three; whereas in 1851 they were in that of one to two.

3. This, as you cannot but be aware, is a point to which the attention of the Legislature, and of the highest judicial authorities in this country, has recently been directed, and regarding which extensive improvements are in the course of being introduced. In the state of society in India, and with reference to the agency available for the administration of justice, it is obvious that a cheap, simple and expeditious system of judicature is especially necessary in that country. We are very desirous that the best means of effecting this object should engage your early and deliberate consideration.

4. The observance of prescribed forms and technical rules is highly important, in order that the course of procedure may be definite and regular, as well as the law itself; but such forms and rules are only means towards an end, and care must be taken that they are not so scrupulously attended to as to defeat the end, which is substantial justice. In Courts of Original Jurisdiction, the regular course of procedure may in general be strictly enforced, as it is specially adapted to promote the discovery of truth, and is not then the occasion either of expense or of delay; any neglect in this respect, when it falls under the notice of a higher tribunal, ought to be pointed out as a failure of duty calling for animadversion. But the case is otherwise in Courts of Appeal, and most of all in the Appellate Court in the last resort. The deviation from a prescribed form or technical rule in an early stage of the trial seldom admits of being rectified on appeal, except by quashing the whole course of previous proceedings. Besides the expense and delay thus inflicted upon the parties, it must frequently happen, from the death or absence of witnesses, or from the dexterous frauds of dishonest suitors, that the real merits of the case are less easy to be ascertained on the second trial than they were on the first.

5. In looking into the Reports of recent decisions by the Sudder Courts of the several Presidencies, we have been struck with the large proportion of cases, not only reversed, but remanded for trial *de novo*; this result has been arrived at even after a second appeal to the Sudder Court, and in many instances when the amount at issue falls far short of the costs to be incurred: it generally originates in some technical defect or error. For the reasons which we have explained, we are of opinion that a decision which is substantially right ought not, on appeal, to be disturbed on technical grounds. This reasonable mode of administering justice would leave it open to the Appellate Court to point out whatever errors of procedure the Court of Original Jurisdiction may have fallen into, and to lay down Rules for future guidance; while it would at the same time save suitors from the hardship of being visited with a heavy penalty for the mistakes and oversights of the tribunals to which the law obliges them to resort for justice.

6. We desire that the Rules of Procedure in the various Courts, Original and Appellate, may be carefully revised, with the view of simplifying the administration of justice, and thereby rendering it less expensive and less dilatory, and of converting it, as far as possible, into the practical means of redressing wrongs, instead of being, as it is liable to become, a mere exercise of controversial skill. You will have to consider whether the object will be best attained by the appointment of a Special Commission for the purpose, by referring it to the Sudder Courts at the several Presidencies, or by such other mode as may appear to you advisable; but we desire particularly to impress upon you that no time should be lost in dealing with the subject, which appears to us one of the greatest importance.

APPENDIX B.

PAPERS delivered in by Mr. MILLETT, Question 2350, page 235.

STATEMENT of COSTS in SUITS for MONEY-CLAIM not exceeding 300 Rupees, which a

Number of the Sudder Court.	Number of the Moonsiff's Court.	NAMES OF PARTIES.	Amount of Money-Claim not exceeding 300 Rupees, which Moonsiffs are competent to decide.	Total Costs of Moonsiff's Court in Suits decided Ex parte.	Total Costs of Moonsiff's Court in Suits decided upon Attendance of both Parties.
			Rs a. p.	Rs. a. p.	Rs. a. p.
70 of 1844	391 of 1841	Petumber Dutt - - - - - - Plaintiff v. Ramjewun Dutt - - - - - - Defendant	104 8 - Loan	15 10 4	20 14 8
225 of 1849	2,338 - 52 -	Seebsunker Seu - - - - - - Plaintiff v. Ramnohun Sirma, &c. - - - - - Defendant	213 5 4 Loan	* 49 12 - † 28 8 4	42 - 1
198 of 1846	4,014 -	Kashee Pershad - - - - - - Plaintiff v. Moorut Singh - - - - - - - Defendant	276 1 6	31 10 9	36 15 6

* Under particular circumstances of difficulty.
† No difficulty, as above, of serving Notices.

STATEMENT of COSTS in CLAIMS for LANDED PROPERTY not exceeding 300 Rupees' Value, which

Number of the Sudder Court.	Number of the Moonsiff's Court.	NAMES OF PARTIES.	Amount of Claim for Landed Property not exceeding 300 Rupees' Value, which Moonsiffs are competent to decide.	Total Costs of Moonsiff's Court in Suits decided Ex parte.	Total Costs of Moonsiff's Court in Suits decided upon the Attendance of both Parties.
			Rs. a. p.	Rs. a. p.	Rs. a. p.
71 of 1844	117 of 1842	Bhujun Saboo - - - - - - - Plaintiff v. Jhooree Sahoo - - - - - - - Defendant	298 15 11 for possession of land -	32 12 5	47 2 -
192 of 1847	5,053 -	Musst. Urnoopoorna - - - - - - Plaintiff v. Dinnoowath Dass - - - - - - Defendant	280 11 6 for possession of land -	31 14 -	106 14 6
205 of 1844	[illegible]23 of 1842	Musst. Yaramonee Dassee - - - - - Plaintiff v. Musst. Motee Buneeyen - - - - - Defendant	293 5 4 for possession of land -	32 8 5	50 8 8

APPENDIX B.

PAPERS delivered in by Mr. MILLETT, Question 2350, page 235.

Moonsiff is competent to decide, as incurred in the Courts of First, Second and Third Instance.

Plaintiff's Costs.	Defendant's Costs.	Total Costs of Judge's or Principal Sudder Ameen's Court upon Appeal.	Appellant's Costs.	Respondent's Costs.	Total Costs of the Judge's Court upon Appeal.	Total Costs of Sudder Court upon Special Appeal.	Appellant's Costs.	Respondent's Costs.
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
15 11 4	5 3 4	29 - -	19 - -	10 - -	- - -	100 6 6	53 3 3	47 3 3
27 12 5	14 3 8	58 13 -	46 2 6	12 10 6	- - -	59 4 10	38 10 5	20 10 5
19 7 -	17 8 6	48 5 -	33 - 6	15 4 6	- - -	129 9 6	71 12 9	57 12 9

a Moonsiff is competent to decide, as incurred in the Courts of First, Second and Third Instance.

Plaintiff's Costs.	Defendant's Costs.	Total Costs of Principal Sudder Ameen's Court upon Appeal.	Appellant's Costs.	Respondent's Costs.	Total Costs of the Judge's Court upon Appeal.	Total Costs of Sudder Court upon Special Appeal.	Appellant's Costs.	Respondent's Costs.
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
31 6 9	15 11 3	55 10 6	33 11 3	21 15 3	- - -	117 12 11	64 14 5	52 14 6
50 4 -	56 10 6	68 8 -	54 - -	14 8 -	- - -	40 - -	40 - -	Ex parte.
32 14 -	17 10 8	63 - -	41 8 -	21 8 -	- - -	195 4 10	106 10 5	88 10 5

If an Ameen goes out, his charge is 15 annas per diem for self and peon.

APPENDIX B.—*continued.*

STATEMENT of COSTS in SUITS for MONEY-CLAIM not exceeding 1,000 Rupees, which a

Number of the Sudder Court.	Number of the Sudder Ameen's Court.	NAMES OF PARTIES.	Amount of Claim for Money not exceeding 1,000 Rupees, which Sudder Ameens are competent to decide.	Total Costs of Sudder Ameen's Court in Suits decided Ex parte.	Total Costs of Sudder Ameen's Court in Suits decided upon Attendance of both Parties.
			Rs. a. p.	Rs. a. p.	Rs. a. p.
145 of 1849 -	45 of 1846 -	Nubkishu Ghose - - - - - - - Plaintiff *v.* Musst. Belr Jhaloo, &c. - - - - - Defendants	503 12 10 Loan -	73 5 –	121 13 –
422 of 1848 -	123 of 1845 -	Oodut Singh - - - - - - - - Plaintiff *v.* Ram Sohay Singh, &c. - - - - - Defendants	526 11 –	74 2 9	141 11 6
462 of 1848 -	33 of 1846 -	Baboo Rambully Singh - - - - - Plaintiff *v.* Munnoo Singh, &c. - - - - - - Defendants	703 8 –	83 5 –	162 8 5

STATEMENT of COSTS in CLAIMS for LANDED PROPERTY not exceeding 1,000 Rupees' Value, which

Number of the Sudder Court.	Number of the Sudder Ameen's Court.	NAMES OF PARTIES.	Amount of Claim for Landed Property not exceeding 1,000 Rupees' Value, which Sudder Ameens are competent to decide.	Total Costs of Sudder Ameen's Court in Suits decided Ex parte.	Total Costs of Sudder Ameen's Court in Suits decided upon Attendance of both Parties.
			Rs. a. p.	Rs. a. p.	Rs. a. p.
115 of 1845 -	10 of 1842 -	Shah Mohomudee, &c. - - - - - Plaintiffs *v.* Bechoo Padhia, &c. - - - - - - Defendants	577 7 – for lands	77 3 7	178 15 –
176 of 1848 -	829 of 1843, former	Baboo Jeetnarain Singh, &c. - - - - Plaintiffs *v.* Fekoo Chowdhry, &c. - - - - - Defendants	607 8 – for lands	78 11 7	225 10 –
155 of 1844 -	29 of 1842 -	Kirtynath Sirma - - - - - - - Plaintiff *v.* The Deputy Collector - - - - - Defendant	148 12 6 for lands	29 12 4	41 6 10

APPENDIX B.—*continued.*

Sudder Ameen is competent to decide, as incurred in the Courts of First, Second and Third Instance.

Plaintiff's Costs.	Defendant's Costs.	Total Costs of Principal Sudder Ameen's Court upon Appeal.	Appellant's Costs.	Respondent's Costs.	Total Costs of Judge's Court upon Appeal.	Appellant's Costs.	Respondent's Costs.	Total Costs of Sudder Court upon Special Appeal.	Appellant's Costs.	Respondent's Costs.
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
89 15 -	31 14 -	- - -	- -	- -	89 14 -	64 3 -	25 11 -	92 4 10	61 2 5	31 2 5
73 8 10	68 2 8	103 3 4	65 4 10	37 14 6	- - -	- -	- -	124 14 3	94 9 6	30 4 9
111 14 -	50 10 5	119 5 -	79 10 6	39 10 6	- - -	- -	- -	71 2 5	71 2 5	Ex parte.

a Sudder Ameen is competent to decide, as incurred in the Courts of First, Second and Third Instance.

Plaintiff's Costs.	Defendant's Costs.	Total Costs of Principal Sudder Ameen's Court upon Appeal.	Appellant's Costs.	Respondent's Costs.	Total Costs of Judge's Court upon Appeal.	Appellant's Costs.	Respondent's Costs.	Total Costs of Sudder Court upon Special Appeal.	Appellant's Costs.	Respondent's Costs.
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
105 - -	73 15 -	99 - -	67 2 -	31 14 -	- - -	- -	- -	177 11 2	104 13 7	72 13 7
118 14 - for 1st, 2d and present decisions	106 12 - for 1st, 2d and present decisions	97 2 -	66 4 -	30 14 -	- - -	- -	- -	137 - 9	66 5 7	70 11 2
26 - 5	15 6 5	- - -	- -	- -	24 12 5	24 12 5	Ex parte	103 8 -	68 12 -	34 12 -

APPENDIX B.—continued.

STATEMENT of Costs in Suits for Money-Claim above 1,000 Rupees, but not exceeding 5,000 Rupees, which a

Number of the Sudder Court.	Number of the Principal Sudder Ameen's Court.	NAMES OF PARTIES.		Amount of Money-Claim from 1,000 to 5,000 Rupees, which a Principal Sudder Ameen is competent to decide.	Total Costs of Principal Sudder Ameen's Court in Suits decided Ex parte.	Total Costs of Principal Sudder Ameen's Court in Suits decided upon Attendance of both Parties.
				Rs. a. p.	Rs. a. p.	Rs. a. p.
175 of 1840 -	27,861 - -	Mukhun Lal, &c. - - - - - - - v. Doorga Dutt, &c. - - - - - - -	Plaintiffs Defendants	1,321 6 – Loan	131 6 9	208 15 8
67 of 1840 -	35 of 1837 -	Nil Raut Roy - - - - - - - - v. Zumeeroodddeen Chowdhry - - - - - -	Plaintiff Defendant	4,998 7 10 Loan	421 4 4	732 10 10
201 of 1840 -	333 of 1836, original	Raja Rajnarine - - - - - - - - v. Ramanath Chatterjee, &c. - - - - - -	Plaintiff Defendants	1,598 10 15 Loan	147 4 4	249 1 7

STATEMENT of Costs in Claims for Landed Property of Value above 1,000 Rupees, but not exceeding Second and

Number of the Sudder Court.	Number of the Principal Sudder Ameen's Court.	NAMES OF PARTIES.		Amount of Claim for Landed Property of Value above 1,000 Rupees, but not exceeding 5,000 Rupees, which a Principal Sudder Ameen is competent to decide.	Total Costs of Principal Sudder Ameen's Court in Suits decided Ex parte.	Total Costs of Principal Sudder Ameen's Court in Suits decided upon Attendance of both Parties.
				Rs. a. p.	Rs. a. p.	Rs. a. p.
295 of 1839 -	13,714, Civil	Seebnarine Roy - - - - - - - v. Punchanund Roy, &c. - - - - - -	Plaintiff Defendants	1,095 4 10 for possession of land	131 2 –	221 4 –
257 of 1839 -	12 of 1837 -	Bhekarry Singh - - - - - - - v. Lotun Singh, &c. - - - - - - -	Plaintiff Defendants	1,130 14 10 for possession of Mouza Luchmipore	125 12 –	206 11 10
5 of 1844 -	36 - -	Ranee Chundro Money Debia - - - - - v. Raja Kashee Kaut Singh, &c. - - - - -	Plaintiff Defendants	1,100 – – for possession of Zumeendary -	131 6 –	234 2 –

APPENDIX B.—*continued.*

Principal Sudder Ameen is competent to decide, as incurred in the Courts of First, Second and Third Instance.

Plaintiff's Costs.	Defendant's Costs.	Total Costs of Judge's Court upon Appeal	Appellant's Costs.	Respondent's Costs.	Total Costs of Sudder Court upon Special Appeal.	Appellant's Costs.	Respondent's Costs.
Rs. a. p.	Rs a. p	Rs. a p.	Rs a. p.	Rs. a. p.	Rs a p	Rs a p.	Rs a. p.
139 6 10	69 8 10	234 5 6	130 8 -	103 13 6	264 1 6	158 - 9	106 9
447 9 5	285 1 5	711 13 6	431 14 9	279 14 9	787 12 10	469 14 5	317 14 5
158 10 7	90 7 7	236 10 8	138 8 -	98 2 8	205 14 5	205 14 5	Ex parte

5,000 Rupees, which a Principal Sudder Ameen is competent to decide, as incurred in the Courts of First, Third Instance.

Plaintiff's Costs	Defendant's Costs.	Total Costs of Judge's Court upon Appeal.	Appellant's Costs.	Respondent's Costs	Total Costs of Sudder Court upon Special Appeal.	Appellant's Costs.	Respondent's Costs.
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs a. p.	Rs a. p.	Rs. a p.	Rs. a. p	Rs. a p
138 12 -	82 8 -	56 - -	52 - -	4 - - only, value of Fysalah (Stamp)	315 8 -	176 12 -	138 12 -
126 4 -	80 7 10	221 10 3	118 12 3	102 14 -	271 - -	158 8 -	112 8 -
144 2 -	90 - -	134 14 -	126 6 -	8 8 -	258 - -	155 - -	103 - -

APPENDIX B.—*continued.*

STATEMENT of COSTS in SUITS for MONEY-CLAIM above 5,000 Rupees and upwards, which a

Number of the Sudder Court.	Number of the Principal Sudder Ameen's Court.	NAMES OF PARTIES.		Amount of Money-Claim exceeding 5,000 Rupees and upwards, which a Principal Sudder Ameen is competent to decide.
				Rs. a. p.
287 of 1839 - -	27,166 - - -	Munbode Sahoo - - - - - - - - - *v.* Musst. Balkoour, &c. - - - - - - - -	Plaintiff - Defendants	5,275 - - amount of advance
34 of 1844 - -	63 of 1843 - -	Gopal Dass Muhunt - - - - - - - - - *v.* Khaja Russool Khan, &c. - - - - - - - -	Plaintiff - Defendants	21,332 13 - Bond debt
101 of 1844 - -	65 of 1843 - -	Gobind Chundro Baboo - - - - - - - - *v.* Rampershad Roy - - - - - - - -	Plaintiff - Defendant	9,372 - - Bond debt

STATEMENT of COSTS in CLAIMS for LANDED PROPERTY above 5,000 Rupees' Value and upwards, which a

Number of the Sudder Court.	Number of the Principal Sudder Ameen's Court.	NAMES OF PARTIES.		Amount of Claim for Landed Property above 500 Rupees' Value and upwards, which a Principal Sudder Ameen is competent to decide.
				Rs. a. p.
265 of 1839 - -	127, Original - -	Pran Kishen Huldar - - - - - - - - - - *v.* Dwarkanauth Thakoor, &c. - - - - - - -	Plaintiff - Defendants	139,265 2 10 for possession of Talook
64 of 1844 - -	15 - - -	Issanchunder Chuckerbutty, &c. - - - - - - *v.* Ramkoomar Chuckerbutty, &c. - - - - - -	Plaintiffs - Defendants	6,969 9 7 Co.'s rupees for possession of Talook
10 of 1344 - -	1,334 - - -	Kishen Kaut Sha, &c. - - - - - - - - - *v.* Gobindmony Chowdhryn, &c. - - - - - - -	Plaintiffs - Defendants	12,217 7 - for possession of Talook

Appendix B.—*continued.*

Principal Sudder Ameen is competent to decide, as incurred in the Courts of First and Second Instance.

Total Costs of Principal Sudder Ameen's Court in Suits decided Ex parte.	Total Costs of Principal Sudder Ameen's Court in Suits decided upon Attendance of both Parties.	Plaintiff's Costs.	Defendant's Costs.	Total Costs of Sudder Court upon Appeal.	Appellant's Costs.	Respondent's Costs.
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
525 12 -	826 2 -	537 12 -	288 6 -	851 - -	555 8 -	295 8 -
1,084 12 -	2,838 1 -	1,116 7 3	1,721 9 9	1,694 10 2	1,097 5 1	597 5 1
609 7 -	964 6 -	612 7 -	351 15 -	1,008 14 -	633 7 -	375 7 -

Principal Sudder Ameen is competent to decide, as incurred in the Courts of First and Second Instance.

Total Costs of Principal Sudder Ameen's Court in Suits decided Ex parte.	Total Costs of Principal Sudder Ameen's Court in Suits decided upon Attendance of both Parties.	Plaintiff's Costs.	Defendant's Costs.	Total Costs of Sudder Court upon Appeal.	Appellant's Costs.	Respondent's Costs.
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p	Rs. a. p.
3,052 6 -	4,709 1 4	3,132 6 8	1,576 10 8	5,130 - -	3,060 - -	2,070 - -
591 12 -	1,415 - 9	1,098 2 9	316 14 -	601 6 1	601 6 1	Ex parte.
796 11 7	1,485 7 -	648 1 6	837 5 6	1,174 5 8	713 2 10	461 2 10

APPENDIX B.—*continued.*

STATEMENT of COSTS in SUITS for MONEY-CLAIM above 5,000 Rupees and upwards, which

Number of the Sudder Court.	Number of the Judge's Court.	NAMES OF PARTIES.		Amount of Money-Claim above 5,000 Rupees' Value and upwards, which a Judge is competent to decide.
				Rs. a. p.
103 of 1832 - -	6,698, Civil - -	Ramruttun Bose, &c. - - - - - - - - - *v.* Kesubram Roy, &c. - - - - - - - - -	Plaintiffs Defendants	8,711 - - Loan
230 of 1840 - - This case was remanded.	5,994, Original -	Debnaraine Roy Mohashai, &c. - - - - - - - *v.* Musst. Heramony - - - - - - - - -	Plaintiffs Defendant	19,489 6 - Loan
412 of 1848 - -	5 of 1847 - - Judge's Court.	Mrs. A. S. Borlard - - - - - - - - - *v.* Musst. Kisnomony, &c. - - - - - - - -	Plaintiff Defendants	20,600 - - Loan

STATEMENT of COSTS in CLAIMS for LANDED PROPERTY exceeding 5,000 Rupees' Value and upwards,

Number of the Sudder Court.	Number of the Judge's Court.	NAMES OF PARTIES.		Amount of Claim for Landed Property exceeding 5,000 Rupees' Value and upwards, which a Judge is competent to decide.
				Rs. a. p.
180 of 1849 - -	223 of 1841 - -	Nubeen Kishn Singh, &c. - - - - - - - - *v.* Issur Chunder Paul Chowdhry - - - - -	Plaintiffs Defendant	8,960 - - for landed property
360 of 1847 - -	47 of 1844 -	Baboo Oomraoh Singh, &c. - - - - - - - - *v.* Government and others - - - - - - - -	Plaintiffs Defendants	9,206 11 - for landed property
246 of 1846 - -	22 of 1844 - -	Mr. R. O. Dowda, Receiver, Supreme Court - - - - *v.* Moharaja Kishn Kishmer Manick, &c. - - - -	Plaintiff Defendants	15,595 8 - for landed property

APPENDIX B.—*continued.*

a Judge is competent to decide, as incurred in the Courts of First and Second Instance.

Total Costs of Judge's Court in Suits decided Ex parte.	Total Costs of Judge's Court in Suits decided upon Attendance of both Parties.	Plaintiff's Costs.	Defendant's Costs.	Total Costs of Sudder Court upon Appeal.	Appellant's Costs.	Respondent's Costs.
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
595 9 6	941 – –	608 4 –	332 12 –	647 1 11	615 1 11	32 – –
1,061 6 4	1,261 16 –	Former and present, 1,185 12 –	75 14 –	1,669 9 –	1,091 12 6	577 12 6
1,088 10 –	1,739 4 –	1,110 10 –	628 10 –	1,624 – –	1,062 – –	562 – –

which a Judge is competent to decide, as incurred in the Courts of First and Second Instance.

Total Costs of Judge's Court in Suits decided Ex parte.	Total Costs of Judge's Court in Suits decided upon Attendance of both Parties.	Plaintiff's Costs.	Defendant's Costs.	Total Costs of Sudder Court upon Appeal.	Appellant's Costs.	Respondent's Costs.
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
631 6 5	1,055 15 10	657 14 5	398 1 5	925 6 5	587 3 3	338 3 3
636 8 8	1,441 8 –	680 3 10	761 4 2	1,272 5 9	594 1 11	678 3 10
1,652 12 11	4,506 2 –	2,271 10 –	2,234 8 –	2,333 14 6	1,521 15 3	811 15 3

APPENDIX B.—*continued.*

APPEALS from MOONSIFFS to JUDGE or PRINCIPAL SUDDER AMEEN.

No.	NAMES OF PARTIES.	CLAIM.	Costs incurred by Plaintiff.	Costs incurred by Defendant.	Total Costs of Suit.	Whether tried on its Merits or Ex parte.
		FOR MONEY:				
37	Meda *v.* Neadur Mull - - -	Rs. 281. 2. - -	Rs. a. p. Stamps - - 18 8 - Tulubanuh - 3 4 - Vakeel's Fees - 14 - -	Rs. a. p. Stamps - - 3 8 - Vakeel's Fees - 14 - -	Rs. a. p. 53 4 -	On its merits.
38	Futteh Singh - - Plff. Appt. *v.* Goolab Singh - - Deft. Respt.	Rs. 210. debt in account.	Original Proceedings: Institution Fee 16 - - Tulubanuh - 29 2 - Vakeel's Fees - 10 8 - 55 10 - Appeal: Institution Fee 16 - - Stamps - - 2 8 - Tulubanuh - 10 4 - Vakeel's Fees - 10 8 - 39 4 - 94 14 -	Original Proceedings: Tulubanuh - 2 10 - Vakeel's Fees - 10 8 - 13 2 -	121 - -	On its merits.
39	Bakhshee Ram - Plff. Appt. *v.* Musst. Nehayut Begum, Deft. Respt.	Rs. 62. 12. debt in account.	Original Proceedings: Institution Fee 4 - - Tulubanuh - 1 8 - Vakeel's Fees - 3 1 6 8 9 6 Appeal: Institution Fee 4 - - Stamps - - 1 8 - Vakeel's Fees - 3 1 6 8 9 6 17 3 -	Original Proceedings: Vakeel's Fees - 3 1 6 Appeal: Stamps - - 1 - - Vakeel's Fees - 3 1 6 4 1 6 7 3 -	24 6 -	On its merits.
40	Chooreea Mull *v.* Neadur Mull -	Rs. 148 - - -	Stamps - - 11 8 - Vakeel's Fees - 7 6 -	- - - - -	18 14 -	Ex parte.
41	Choonneeloll - - Plff. Appt. *v.* Goommanee - - Deft. Respt.	Rs. 105. 5. 6. under Bond.	Original Proceedings: Institution Fee 8 - - Tulubanuh - 3 - Witnesses' allowances - - - 4 - Vakeel's Fees - 5 4 - 16 8 - Appeal: Institution Fee 8 - - Stamps - - 1 8 - Vakeel's Fees - 5 4 - 14 12 - 31 4 -	Original Proceedings: Vakeel's Fees - 5 4 - Appeal: Paper for Copy of Decision - 1 - - 6 4 -	37 8 -	Ex parte.
42	Parshadeeloll - Deft. Appt. *v.* Nynsookh and others, Plffs. Respts.	Rs 19. 13. 3. under a Bond.	Original Proceedings: Tulubanuh - - 4 - Vakeel's Fees - - 15 - 1 3 - Appeal: Institution Fee 2 - - Stamps - - 1 8 - Vakeel's Fees - - 15 - 4 7 3 5 10 3	Original Proceedings: Institution Fee 2 - - Tulubanuh - 1 8 - Vakeel's Fees - - 15 3 4 7 3 Appeal: For Copy of Decision - 1 - - 5 7 3	11 1 6	Ex parte.

Appendix B.—Appeals from Moonsiffs to Judge or Principal Sudder Ameen—*continued.*

No.	NAMES OF PARTIES.	CLAIM.	Costs incurred by Plaintiff.	Costs incurred by Defendant.	Total Costs of Suit.	Whether tried on its Merits or Ex parte.
		FOR REAL PROPERTY:	Rs. a. p.	Rs. a. p.	Rs. a. p.	
43	Hurdial *v.* Bhouta - - -	For possession of Zemeendarrie land at its value, Rs. 300.	Stamps - - 21 8 – Tulubanuh - 5 10 – Vakeel's Fees - 15 – –	Stamps - - 6 8 – Vakeel's Fees - 15 – –	63 10 –	On its merits.
44	Bhowanee Singh and others - - Plffs. Appts. *v.* Dibba Singh - - - Respt.	For possession of two bis. Zemeendarrie land, assessed at Rs. 56. 5. per annum.	Original Proceedings: Institution Fee 4 – – Tulubanuh - 4 8 – Vakeel's Fees - 2 12 9 11 4 9 Appeal: Institution Fee 4 – – Stamps - - 2 8 – Vakeel's Fees - 2 12 9 9 4 9 20 9 6	Original Proceedings: Tulubanuh - 1 4 – Vakeel's Fees - 2 12 9 4 – 9 Appeal: Stamps - - 3 8 – Vakeel's Fees - 2 12 9 6 4 9 10 5 6	30 15 –	On its merits.
45	Gholam Hussun Khan and others Defts. Appts. *v.* Mohd Kazumalee Khan and others Plffs. Respts.	For possession of 18 beeg. 3 bis. land, at its value, Rs. 62. 1.	Original Proceedings: Tulubanuh - 1 8 – Vakeel's Fees - 3 10 – 5 2 – Appeal: Institution Fee 4 – – Stamps - - 9 – – Tulubanuh - 1 12 – Vakeel's Fees - 3 1 6 17 13 6 22 15 6	Original Proceedings: Institution Fee 4 – – Tulubanuh - 2 – – Vakeel's Fees - 3 1 6 Drawing out sketch of land – 8 – 9 9 6 Appeal: Stamps - - 9 8 – Vakeel's Fees - 3 1 6 12 9 6 22 3 –	45 2 6	On its merits.
46	Ramanund *v.* Mussamut Suma -	For possession of Zemeendarrie land, assessed at Rs. 23. 7. per annum.	Stamps - - 6 8 – Vakeel's Fees - 1 3 –	- - - - -	7 11 –	Ex parte.
47	Choonneeloll and others, Plffs. Appts. *v.* Mirza Ubboo Soorab Khan - - Deft. Respt.	For possession of land at its value, Rs. 100.	Original Proceedings: Institution Fee 8 – – Tulubanuh - 2 8 – Vakeel's Fees - 5 – – 15 8 – Appeal: Institution Fee 8 – – Stamps - - 2 8 – Vakeel's Fees - 5 – – 15 8 – 31 – –	Original Proceedings: Tulubanuh - – 8 – 3 Vakeels' Fees 15 – – 15 8 – Appeal: Paper for Copy of Decision - 2 – – 17 8 –	48 8 –	Ex parte.
48	Wahab Khan - - Plff. Appt. *v.* Ukbar Khan - - Deft. Respt.	For possession of 2½ bis. Zemeendarrie land, assessed at Rs. 17. 8. per annum.	Original Proceedings: Institution Fee 2 – – Tulubanuh - 8 – – Vakeel's Fees - – 13 – 10 13 – Appeal: Institution Fee 2 – – Stamps - - 1 8 – Vakeel's Fees - – 13 6 4 5 6 15 2 6	Original Proceedings: Vakeel's Fees - – 13 – Appeal: For Copy of Decision - 1 – – 1 13 –	16 15 6	Ex parte.

APPENDIX B.—*continued.*

APPEALS from SUDDER AMEENS to JUDGE.

No.	NAMES OF PARTIES.	CLAIM.	Costs incurred by Plaintiff.				Costs incurred by Defendant.				Total Costs of Suit.			Whether tried on its Merits or Ex parte.
				Rs.	a.	p.		Rs.	a.	p.	R.	a.	p.	
		FOR MONEY:												
49	Roopram v. Mussamat Immun -	Rs. 705. 14. - -	Stamps -	37	8	–	Stamps - -	4	8	–	115	3	6	On its merits.
			Tulubanuh -	2	10	–	Vakeel's Fees -	35	4	9				
			Vakeel's Fees -	35	4	9								
			Original Proceedings:				Original Proceedings:							
50	Dutram - - Plff. Appt. v. Hurree Singh & others, Defts. Respts.	Rs. 791. 15, 6, under a Bond.	Institution Fee	32	–	–	Stamps - -	8	8	–	264	11	–	On its merits.
			Stamps - -	11	–	–	Tulubanuh -		4	–				
			Tulubanuh -	16	4	–	Vakeel's Fees -	39	8	9				
			Vakeel's Fees -	39	8	9		49	4	9				
				98	12	9								
			Appeal:				Appeal:							
			Institution Fee	32	–	–	Stamps - -	2	8	–				
			Stamps - -	3	–	–	Vakeel's Fees -	39	8	9				
			Vakeel's Fees -	39	8	9		42	–	9				
				74	8	9		91	5	6				
				173	5	6								
			Original Proceedings:				Original Proceedings:							
51	Guneshpershad - Plff. Appt. v. Mugulsein - - Deft. Respt.	Rs. 650, principal and interest, in account.	Institution Fee	32	–	–	Stamps - -	12	–	–	218	12	–	On its merits.
			Stamps - -	9	–	–	Tulubanuh -	–	4	-				
			Tulubanuh -	–	8	–	Vakeel's Fees -	32	8	–				
			Vakeel's Fees -	32	8	–		44	12	–				
				74	–	–								
			Appeal:				Appeal:							
			Institution Fee	32	–	–	Stamps - -	1	8	–				
			Stamps - -	1	8		Vakeel's Fees -	32	8	–				
			Vakeel's Fees -	32	8	–		34	–	–				
				66	–	–		78	12	–				
				140	–	–								
52	Premnath v. Hursuhae - -	Rs. 361. 2. - -	Stamps - -	35	8	–	- - - - -				53	9	–	Ex parte.
			Vakeel's Fees -	18	1	–								
			Original Proceedings:				Original Proceedings:							
53	Durgaheemull - Plff. Appt. v. Kullian - - - Deft. Respt.	Rs. 984. 5. 3. under a Bond.	Institution Fee	50	–	–	Stamps - -	3	12	–	274	9	9	Ex parte.
			Stamps - -	8	4	–	Vakeel's Fees -	49	3	3				
			Tulubanuh -	6	–			52	15	3				
			Vakeel's Fees -	49	3	3								
				113	7	3								
			Appeal:				Appeal:							
			Institution Fee	50	–	–	For Copy of Decision -	2	–	–				
			Stamps - -	4	[illegible]	–		54	15	3				
			Tulubanuh -	2	8	–								
			Vakeel's Fees -	49	3	3								
				106	3	3								
				219	10	6								
			Original Proceedings:				Original Proceedings:							
54	Musst. Bunnoojan - Plff. Appt. v. Chedaloll and others, Defts. Respts.	Rs. 321. 12. 9. under a Bond.	Institution Fee	32	–	–	Stamps - -	5	8	–	127	6	3	Ex parte.
			Stamps - -	5	–	–	Tulubanuh -	–	4	–				
			Tulubanuh -	1	–	–	Vakeel's Fees -	16	–	9				
			Vakeel's Fees -	16	–	9		21	12	9				
				54	–	9								
			Appeal:				Appeal:							
			Institution Fee	32	–	–	For Copy of Decision -	1	–	–				
			Stamps - -	2	8	–		22	12	9				
			Vakeel's Fees -	16	–	9								
				50	8	9								
				104	9	6								

Appendix B.—Appeals from Sudder Ameens to Judge—*continued.*

No.	NAMES OF PARTIES.	CLAIM.	Costs incurred by Plaintiff.	Costs incurred by Defendant.	Total Costs of Suit.	Whether tried on its Merits or Ex-parte.
		FOR REAL PROPERTY:				
			Rs. a. p.	Rs. a. p.	Rs. a. p.	
55	Mussamat Mobarukoonissa *v.* Mobaruk Ali Khan.	For a share of rent-free land, valued at 18 times its annual produce.	Stamps - - 39 8 - Vakeel's Fees - 30 10 6	Stamps - - 5 8 - Vakeel's Fees - 30 10 6	106 5 -	On its merits.
56	Motee Singh & others, Pliffs. Appts. *v.* Mookram and others, Defts. Respts.	For possession of 12 bis. Zemeendarrie land, assessed at Rs. 585 per annum.	Original Proceedings. Institution Fee 32 - - Stamps - - 10 - - Tulubanuh - 23 6 - Vakeel's Fees - 29 4 - 94 10 - Appeal. Institution Fee 32 - - Stamps - - 7 8 - Tulubanuh - 10 - - Vakeel's Fees - 29 4 - 78 12 - 173 6 -	Original Proceedings: Stamps - - 2 - - Vakeel's Fees - 58 8 - 60 8 - Appeal Stamps - - 7 8 - Vakeel's Fees - 29 4 - 36 12 - 97 4 -	270 10 -	On its merits.
57	Bunseedhur - - Deft. Appt. *v.* Rughoomul - - Pliff. Respt.	For possession of Zemeendarrie Mowzah Boolboollee, assessed at Rs. 575 per annum.	Original Proceedings. Stamps - - 3 8 - Vakeel's Fees - 28 12 - 32 4 - Appeal. Institution Fee 32 - - Stamps - - 6 8 - Vakeel's Fees - 28 12 - 67 4 - 99 8 -	Original Proceedings. Institution Fee 32 - - Stamps - - 3 - - Tulubanuh - 3 8 - Vakeel's Fees - 28 12 - 67 4 - Appeal: Stamps - - 12 8 - Vakeel's Fees - 28 12 - 41 4 - 108 8 -	208 - -	On its merits.
58	Gowree Dut *v.* Mohkum Chund -	For possession of Zemeendarrie land at its value, Rs. 750.	Stamps - - 35 8 - Vakeel's Fees - 37 8 -	- - - - - -	73 - -	Ex parte.
59	Chubbee - - Pliff Appts *v.* Jymul Singh - - Deft. Respt.	For possession of Zemeendarrie land, assessed at Rs. 410 per annum.	Original Proceedings: Institution Fee 32 - - Stamps - - 10 - - Tulubanuh - 5 8 Vakeel's Fees - 20 8 - 68 - - Appeal Institution Fee 32 - - Stamps - - 4 8 - Tulubanuh - 2 8 - Vakeel's Fees - 20 8 - 59 8 - 127 8 -	Original Proceedings: Stamps - - 1 - - Vakeel's Fees - 20 8 - 21 8 -	149 - -	Ex parte.
60	Moolchund and others, Defts. Appts. *v.* Dabeedoss - - Pliff. Respt.	For possession of a dwelling-house at its value, Rs. 650. 7.	Original Proceedings: Stamps - - 12 8 - Tulubanuh - 1 4 - Vakeel's Fees - 32 8 - 46 4 - Appeal Institution Fee 32 - - Stamps - - 3 8 - Vakeel's Fees - 32 8 - 68 - - 114 4 -	Original Proceedings: Institution Fee 32 - - Stamps - - 10 - - Tulubanuh - 6 12 - Vakeel's Fees - 32 8 - 81 4 - Appeal: For Copy of Decision - 2 - - 83 4 -	197 8 -	Ex parte.

APPENDIX B.—*continued.*

ORIGINAL SUITS of SUDDER AMEEN, from 300 Rupees to 1,000 Rupees.

No.	NAMES OF PARTIES.	CLAIM.	Costs incurred by Plaintiff.	Rs.	a.	p.	Costs incurred by Defendant.	Rs.	a.	p.	Total Costs of Suit. Rs.	a.	p.	Whether tried on its Merits or Ex parte.
		FOR MONEY:												
13	Deondial *v.* Toolsee Ram	Rs. 827. 13. 6.	Institution Fee	50	–	–	Stamps	33	8	–	247	8	–	On its merits.
			Other Stamps	41	8	–	Tulubanuh	13	9	6				
			Tulubanuh	26	2	6	Vakeel's Fees	41	6	–				
			Vakeel's Fees	41	6	–								
14	Mungoololl - Plff. *v.* Enayutoollah Khan - Deft.	Rs. 488, under a Bond	Institution Fee	32	–	–	Stamps	4	–	–	101	1	–	On its merits.
			Other Stamps	4	–	–	Tulubanuh	4	8	–				
			Tulubanuh	7	12	–	Vakeel's Fees	24	6	6				
			Vakeel's Fees	24	6	6		32	14	6				
				68	2	6								
15	Mohd Mulloo Khan - Plff. *v.* Musst. Ouleeah Begum - Deft.	Rs. 626. 2. 6. rent	Institution Fee, one fourth	8	–	–	Stamps	12	–	–	105	10	9	On its merits.
			Other Stamps	11	–	–	Tulubanuh	2	11	3				
			Tulubanuh	9	6	–	Vakeel's Fees	31	4	9				
			Vakeel's Fees	31	4	9		46	–	–				
				59	10	9								
16	Goolab Singh *v.* Meen	Rs. 799. 3. 8.	Institution Fee	32	–	–	- - - - -				80	13	3	Ex parte.
			Other Stamps	7	–	–								
			Tulubanuh	1	14	–								
			Vakeel's Fees	39	15	3								
17	Bhopal Sing - Plff. *v.* Zalim Singh - Deft.	Rs. 699, under a Bond	Institution Fee	32	–	–	- - - - -				85	9	3	Ex parte.
			Other Stamps	5	–	–								
			Tulubanuh	13	10	–								
			Vakeel's Fees	34	15	3								
				85	9	3								
18	Futteh Singh - Plff. *v.* Sabah Singh - Deft.	Rs. 543. 12. under a Bond.	Institution Fee	32	–	–	- - - - -				70	4	3	Ex parte.
			Other Stamps	4	8	–								
			Tulubanuh	6	10	–								
			Vakeel's Fees	27	2	3								
				70	4	3								
		FOR REAL PROPERTY:												
19	Shadee Ram *v.* Bunsee Lall	For possession of a share of a house, value Rs. 426. 10. 3.	Institution Fee	32	–	–	Stamps	6	–	–	94	4	6	On its merits.
			Other Stamps	12	8	–	Vakeel's Fees	21	5	3				
			Tulubanuh	1	2	–								
			Vakeel's Fees	21	5	3								
20	Nerunjun Singh - Plff. *v.* Sutcha Singh, &c. - Defts.	For possession of Zemeendarrie land, assessed at Rs. 473. 4. per annum.	Institution Fee	32	–	–	Stamps	9	–	–	107	8	6	On its merits.
			Other Stamps	10	8	–	Tulubanuh	1	12	–				
			Tulubanuh	5	–	–	Vakeel's Fees	24	10	3				
			Vakeel's Fees	24	10	3		35	6	3				
				72	2	3								
21	Sarajooddeen Khan - Plff. *v.* Sheo Gholam - Deft.	For possession of Zemeendarrie land at its value, Rs. 380. 9. 3	Institution Fee	32	–	–	Stamps	8	8	–	94	12	–	On its merits.
			Other Stamps	11	–	–	Vakeel's Fees	19	–	–				
			Tulubanuh	5	4	–		27	8	–				
			Vakeel's Fees	19	–	–								
				67	4	–								
22	Keshree Singh *v.* Khoshial	For possession of Zemeendarrie land at its mortgaged value, Rs. 605.	Institution Fee	32	–	–	- - - - -				77	12	–	Ex parte.
			Other Stamps	6	8	–								
			Tulubanuh	9	–	–								
			Vakeel's Fees	30	4	–								
23	Jhao - Plff. *v.* Bullee - Deft.	For possession of Zemeendarrie land, assessed at Rs. 568. 12. per annum.	Institution Fee	32	–	–	- - - - -				70	6	3	Ex parte.
			Other Stamps	4	8	–								
			Tulubanuh	5	12	–								
			Vakeel's Fees	28	2	3								
				70	6	3								
24	Gyan Singh - Plff. *v.* Laljeemull - Deft.	For possession of Zemeendarrie land, assessed at Rs. 825 per annum.	Institution Fee	50	–	–	- - - - -				82	10	–	Ex parte.
			Other Stamps	2	8	–								
			Tulubanuh	9	8	–								
			Vakeel's Fees	20	10	–								
				82	10	–								

APPENDIX B.—*continued.*

ORIGINAL SUITS of PRINCIPAL SUDDER AMEEN, from 1,000 Rupees upwards.

No.	NAMES OF PARTIES.	CLAIM.	Costs incurred by Plaintiff.	Costs incurred by Defendant.	Total Costs of Suit.	Whether tried on its Merits or Ex parte.
	FOR MONEY:					
25	Nao Nehal *v.* Shakoor Dass -	Rs. 1,093. 15. 6. -	Rs. a. p. Institution Fee 50 – – Other Stamps - 17 8 – Tulubanuh - 3 15 - Vakeel's Fees - 54 11 9	Rs. a. p. Stamps - - 13 8 – Tulubanuh - 2 10 – Vakeel's Fees - 54 11 9	Rs. a. p. 197 – 6	On its merits.
26	Bukhshee Ram - - - Plff. *v.* Jhao Singh - - - Deft.	Rs. 2,915. 2. - -	Institution Fee 100 – – Other Stamps 9 8 - Tulubanuh - 2 4 – Vakeel's Fees - 145 12 – 257 8 -	Stamps - - 9 8 – Tulubanuh - 1 – – Vakeel's Fees 145 12 – 156 4 –	413 12 –	On its merits.
27	Musst. Rane, wife of Rugnath Singh - - - - Plff. *v.* Buldeo Bukhsh - - - Deft	Rs. 1,495. 7. 9. balance under farming engagement.	Institution Fee, one-fourth 12 8 – Other Stamps 14 8 – Tulubanuh - 14 8 – Vakeel's Fees - 74 12 - 116 4 –	Stamps - - 6 – – Vakeel's Fees - 74 12 - 80 12 –	197 – –	On its merits.
28	Kunyah Loll *v.* Mrs. Glasgow -	Rs. 1,442. 15. - -	Institution Fee 50 – – Other Stamps 5 8 – Tulubanuh - – 12 - Vakeel's Fees - 72 2 -	- - - - - -	128 6 –	Ex parte
29	Rughamull - - - Plff. *v.* Ramnath - - - - Deft.	Rs. 1,261. 8. 9. under a Bond.	Institution Fee 50 – – Other Stamps 10 8 – Tulubanuh - 5 4 - Vakeel's Fees - 63 – 9 128 12 9	- - - - - -	128 12 9	Ex parte.
30	Abdool Ulee Khan - - Plff. *v.* Kehur Singh - - - Deft.	Rs. 1,598. 1. 9. under a Bond.	Institution Fee 50 - – Other Stamps 8 8 – Tulubanuh - 10 – Vakeel's Fees - 79 14 6 148 6 6	- - - - - -	148 6 6	Ex parte.
	FOR REAL PROPERTY:					
31	Muhomed Bukhsh *v.* Mussamat Bunskour	For redemption from mortgage of Zemeendarrie land and gardens; value of land according to its annual assessment; and the gardens at their value, Rs. 1,430. 4. 6.	Institution Fee 50 - – Other Stamps 19 8 – Tulubanuh - 31 8 - Vakeel's Fees - 71 8 3	Stamps - - 20 8 – Vakeel's Fees - 71 8 3	264 8 6	On its merits.
32	Girdhareeloll - - - Plff. *v.* Teeka Ram - - - Deft.	For possession of 10 bis. 17 biswan. Zemeendarrie land, assessed at Rs. 1,131. 14.	Institution Fee 50 – – Other Stamps 23 8 – Tulubanuh - 1 12 - Vakeel's Fees 59 – 9 134 4 9	Stamps - - 10 8 – Vakeel's Fees - 59 – 9 69 8 9	203 13 6	On its merits.
33	Toree Singh - - - Plff. *v.* Musst. Hurkonwar and others, Defts.	For possession of 10 bis. Zemeendarrie land, assessed at Rs. 1,700.	Institution Fee 100 – - Other Stamps 29 8 – Tulubanuh - 6 – – Vakeel's Fees - 85 – – 220 8 –	Principal Defendant: Stamps - - 44 – – Vakeel's Fees - 85 – - 129 – – Hindoo Singh and others: Stamps - - 5 8 – Vakeel's Fees 85 – – 90 8 - 219 8 –	440 – –	On its merits.
34	Moolla *v.* Seja - - - -	For possession of a house, value Rs. 1,600.	Institution Fee 50 – – Other Stamps 13 8 – Vakeel's Fees - 80 – –	- - - - - -	143 8 –	Ex parte.
35	Enayut Hossein Khan and others - - - - Plffs. *v.* Teeka Ram and others - Defts.	For possession of land at its value, Rs. 3,000.	Institution Fee 100 – – Other Stamps 29 – – Tulubanuh - 19 – – Vakeel's Fees 150 – – 298 – –	- - - - - -	298 – –	Ex parte.
36	Himmut Singh and others - Plffs. *v.* Mukbool Hossein and others, Defts.	For possession of Zemeendarie land, assessed at Rs. 2,225 per annum.	Institution Fee 100 – – Other Stamps 12 8 – Tulubanuh - 1 – – Vakeel's Fees 111 4 – 224 12 –	- - - - - -	224 12 –	Ex parte.

APPENDIX B.—*continued.*

APPEALS from PRINCIPAL SUDDER AMEENS to JUDGE, from 1,000 Rupees to 5,000 Rupees.

No.	NAMES OF PARTIES.	CLAIM.	Costs incurred by Plaintiff.	Costs incurred by Defendant.	Total Costs of Suit.	Whether tried on its Merits or Ex parte.
		FOR MONEY:				
			Rs. a. p.	Rs. a. p.	Rs. a. p.	
61	Dursookh Rae *v.* Gumundee -	Rs. 1,103 - -	Stamps - 59 8 – Tulubanuh - 5 4 – Vakeel's Fees - 55 2 3	Stamps - - 4 8 – Vakeel's Fees - 55 2 3	179 8 6	On its merits.
62	Dhunnee Ram - Plff. Appt. *v.* Beharreelol - - Deft. Respt.	Rs. 1,316. 9. 9. under a Bond.	Original Proceedings: Institution Fee 50 – – Stamps - - 27 8 – Tulubanuh - 4 – – Vakeel's Fees - 65 12 9 147 4 9 Appeal: Institution Fee 50 – – Stamps - - 5 8 – Vakeel's Fees - 65 12 9 121 4 9 268 9 6	Original Proceedings: Stamps - - 20 – – Tulubanuh - 4 – – Vakeel's Fees - 65 12 9 89 12 9 Appeal: Stamps - - 5 8 – Vakeel's Fees - 65 12 9 71 4 9 161 1 6	429 11 –	On its merits.
63	Chundunlol - - Plff. Appt. *v.* Musst. Moonnee Begum - - Deft. Respt.	Rs. 1,386. 12. 6. under a Bond.	Original Proceedings: Institution Fee 50 – – Stamps - - 18 8 – Tulubanuh - 8 12 – Vakeel's Fees - 69 4 9 146 8 9 Appeal: Institution Fee 50 – – Stamps - - 3 – – Vakeel's Fees - 69 4 9 122 4 9 268 13 6	Original Proceedings: Stamps - - 27 – – Tulubanuh - – 4 – Vakeel's Fees - 69 4 9 96 8 9 Appeal: Stamps - - 2 8 – Vakeel's Fees - 69 4 9 71 12 9 168 5 6	437 3 -	On its merits.
64	Hetram *v.* Mehudee Hossein -	Rs. 1,543. 13. -	Stamps - - 57 8 – Vakeel's Fees - 77 3 –	- - - - -	134 11 –	Ex parte.
65	Bijeh Ram and others - - Plffs. Appts. *v.* Billas Singh and others - - Defts. Respts.	Rs. 1,287. under a Bond.	Original Proceedings: Institution Fee 50 – – Stamps - - 23 8 – Tulubanuh - 12 – – Vakeel's Fees - 64 5 3 149 13 3 Appeal: Institution Fee 50 – – Stamps - - 3 8 – Vakeel's Fees - 64 5 6 117 13 6 267 10 9	Original Proceedings: Stamps - - 8 8 – Vakeel's Fees - 64 5 6 72 13 6 Appeal: For Copy of Decision - 2 – – 74 13 6	342 8 3	Ex parte.
66	Thakoordoss and others - - Plffs. Appts. *v.* Lekraj and others, Defts. Respts.	Rs. 1,441. 5. under a Bond.	Original Proceedings: Institution Fee 50 – – Stamps - - 16 8 – Tulubanuh - – 12 – Vakeel's Fees - 72 – 9 139 4 9 Appeal: Institution Fee 50 – – Stamps - - 3 – – Vakeel's Fees - 72 – 9 125 – 9 264 5 6	Original Proceedings: Stamps - - 23 – – Tulubanuh - 5 – – Vakeel's Fees - 72 – 9 100 – 9 Appeal: Stamps - - 2 – – 102 – 9	366 6 3	Ex parte.

Apenndix B.—APPEALS from Principal Sudder Ameens to Judge, from 1,000 Rupees to 5,000 Rupees—*continued.*

No.	NAMES OF PARTIES.	CLAIM.	Costs incurred by Plaintiff.	Costs incurred by Defendant.	Total Costs of Suit.	Whether tried on its Merits or Ex parte.
		FOR REAL PROPERTY:	Rs. a. p.	Rs. a. p.	Rs. a. p.	
67	Imam Ali Khan *v.* Mussumat Nujeeboonissa.	For rent-free land and gardens; value of land according to 18 times its annual produce, and the gardens at their value, Rs. 4,717. 11.	Stamps - - 159 8 – Tulubanuh - 2 4 – Vakeel's Fees - 235 14 –	Stamps - - 9 8 – Vakeel's Fees - 235 14 –	643 – –	On its merits.
68	Nusseerooddeen Ahmud and others - } Plffs. Appts. *v.* Koodrutalee - Principal Deft.	For possession of Zemeendarrie land, assessed at Rs. 1,359. 4. 2. per annum.	Original Proceedings: Institution Fee 50 – – Stamps - - 39 – – Tulubanuh - 3 8 – Vakeel's Fees - 67 15 3 160 7 3 Appeal: Institution Fee 50 – – Stamps - - 8 8 – Tulubanuh - 1 12 – Vakeel's Fees - 55 – – 115 4 – 275 11 3	Original Proceedings: Stamps - - 37 4 – Vakeel's Fees - 67 15 3 105 3 3 Appeal: Stamps - - 15 – – Vakeel's Fees - 110 – – 125 – – 230 3 3	505 14 6	On its merits.
69	Behadoor Singh - Deft. Appt. *v.* Gunga Ram - - Plff. Respt.	For possession of Zemeendarrie land, assessed at Rs. 1,410 per annum.	Original Proceedings: Stamps - - 24 8 – Tulubanuh - 1 8 – Vakeel's Fees - 70 8 – 96 8 – Appeal: Institution Fee 50 – – Stamps - - 3 8 – Vakeel's Fees - 54 – – 107 8 – 204 – –	Original Proceedings: Institution Fee 50 – – Stamps - - 28 – – Tulubanuh - 3 12 – Vakeel's Fees - 70 8 – 152 4 – Appeal: Stamps - - 3 – – Tulubanuh - 1 4 – Vakeel's Fees - 54 – – 58 4 – 210 8 –	414 8 –	On its merits.
70	Suna Ahmud *v.* Tufuzal Hossein -	For possession of rent-free land and rights Mosarof Durga, valued altogether at Rs. 2,751. 12.	Stamps - - 119 – – Tulubanuh - 9 12 – Vakeel's Fees - 137 8 9	- - - - -	266 4 9	Ex parte.
71	Futteh Shah Khan and others - } Defts. Appts. *v.* Bhola Singh and others - - } Plffs. Respts.	For possession of Zemeendarric lands, assessed at Rs. 1,150 per annum.	Original Proceedings: Stamps - - 31 8 – Vakeel's Fees - 57 8 – 89 – – Appeal: Institution Fee 50 – – Stamps - - 10 8 – Tulubanuh - – 4 – Vakeel's Fees - 57 8 – 118 4 – 207 4 –	Original Proceedings: Institution Fee 50 – – Stamps - - 34 – – Tulubanuh - 8 – – Vakeel's Fees - 57 8 – 149 8 – Appeal: For Copy of Decision - } 10 – – 159 8 –	366 12 –	Ex parte.
72	Koorban Hossein - Deft. Appt. *v.* Guffuroonnissa - Plff. Respt.	For possession of Zemeendarrie land, assessed at Rs. 1,235. 4. per annum.	Original Proceedings: Stamps - - 29 – – Tulubanuh - – 4 – Vakeel's Fees - 61 12 – 91 – – Appeal: Institution Fee 50 – – Stamps - - 7 8 – Tulubanuh - – 8 – Vakeel's Fees - 61 – – 119 – – 210 – –	Original Proceedings: Institution Fee 50 – – Stamps - - 36 – – Tulubanuh - – 12 – Vakeel's Fees - 61 12 – 148 8 – Appeal: For Copy of Decision - } 5 – – 153 8 –	363 8 –	Ex parte.

APPENDIX B.—*continued.*

No. 1.

STATEMENT, showing COST of LITIGATION in a Regular Suit (*i. e.* exceeding 5,000 Rupees),

N.B.—The Figures between Parentheses

Number of Case.	NAMES OF PARTIES TO SUIT.		Amount of Claim.	Description of Suit.	Expenses of Suit in the Court			
					Institution Fee.	Other Stamps.	Tulbuna.	Wukeels' Fees.
			Rs. a. p.		Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
41 of 1850	Daibee Singh	Deft. Appt.	7,067 8 -	Possession of Land by Right of Inheritance	- - -	24 - -	- - -	335 - -
	v. Bujroo Singh	Plff. Respt.			(250 - -)	(18 - -)	(8 8 -)	(334 12 -)
					250 - -	42 - -	8 8 -	669 12 -
115 of 1850	Hursohai Mull	Plff. Appt.	7,561 5 2	Possession of Land on Conditional Deed of Sale	250 - -	46 - -	4 14 -	301 8 6
	v. Tarnee Churn	Deft. Respt.			- - -	(68 8 -)	(1 11 -)	(301 8 6)
					250 - -	114 8 -	6 9 -	603 1 -
105 of 1844	Bhowanee Pershad and another	Defts. Appts.	10,892 - -	Claim, Possession by Redemption	- - -	36 8 -	- 12 -	398 - -
	v. Abud Alli Khan and another	Plffs. Respts.			(350 - -)	(46 8 -)	(1 12 -)	(398 - -)
					350 - -	83 - -	2 8 -	796 - -
206 of 1849	Moosst. Zainub Begum	Deft. Appt.	13,627 7 1	Possession of Land by Right of Inheritance	- - -	68 8 -	9 4 -	419 11 -
	v. Moosst. Beguma Bebee	Plff. Respt.			(350 - -)	(205 8 -)	(4 8 -)	(419 12 -)
					350 - -	274 - -	13 12 -	839 7 -
17 of 1841	Mohd. Hassan and another	Plffs. Appts.	9,934 12 -	Possession of an Estate under mutual Agreement	250 - -	75 - -	41 2 -	349 1 3
	v. Ahumudoolla and others	Defts. Respts.			- - -	(167 5 -)	(2 6 -)	(2,243 - -)
					250 - -	242 5 -	43 8 -	2,592 1 3
50 of 1847	Bustee Singh and others	Plffs. Appts.	47,746 - -	For Possession and Demarkation of Land	700 - -	9 8 -	7 8 -	777 7 3
	v. Ram Churn and others	Defts. Respts.			- - -	(16 - -)	- - -	(3,109 13 -)
					700 - -	25 8 -	7 8 -	3,887 4 3
57 of 1850	Hubeeboollah	Deft. Appt.	10,066 10 6	Claim on Bond	- - -	49 8 -	5 12 -	351 5 6
	v. Dowlut Ram	Plff. Respt.			(350 - -)	(43 8 -)	(10 4 -)	(351 5 6)
					350 - -	93 - -	16 - -	702 11 -
30 of 1849	Kishon Sahai	Deft. Appt.	6,649 1 3	Claim on Account Books	- - -	52 -	4 8 -	285 - -
	v. Soorun Mull	Plff. Respt.			(250 - -)	(48 8 -)	(21 - -)	(285 - -)
					250 - -	101 - -	25 8 -	570 - -
193 of 1849	Sheoballuck Singh	Deft. Appt.	6,783 12 -	Claim on Mortgage Bond	- - -	2 8 -	- - -	285 3 -
	v. Bainee Pershad	Plff. Respt.			(250 - -)	(23 8 -)	(8 4 -)	(285 3 -)
					250 - -	26 - -	8 4 -	570 6 -
184 of 1849	Ramruttun	Plff. Appt.	5,335 1 1	Claim on Account Books	250 - -	26 - -	4 5 -	256 12 -
	v. Bissal Singh and another	Defts. Respts.			- - -	(4 8 -)	(3 7 6)	(513 8 -)
					250 - -	30 8 -	7 12 6	770 4 -
110 of 1848	Punna Loll	Plff. Appt.	5,788 2 0	Claim, recovery of Amount advanced on Mortgage	250 - -	6 8 -	11 4 -	260 12 3
	v. Sheikh Mehdee and another	Defts. Respts.			- - -	(3 8 -)	- - -	(265 12 3)
					250 - -	10 - -	11 4 -	526 8 6
98 of 1842	Isree Pershad Narain Singh	Deft. Appt.	14,967 10 9	Claim on Deed of Agreement	- - -	- - -	- - -	- - -
	v. Koonj Beharee	Plff. Respt.			(350 - -)	(16 8 -)	(6 2 -)	(449 5 6)
					350 - -	16 8 -	6 2 -	449 5 6

APPENDIX B.—*continued.*

No. 1.

from its Institution to its Termination, in the Appellate Court (Sudder Dewanny Adawlut).

denote Respondents' Expenses.

of First Instance.		Expenses of Suit in Appellate Court.					AGGREGATE of the Two TOTAL COLUMNS.	
Diet of Witnesses and Ameens' Fees.	TOTAL.	Institution Fee.	Other Stamps.	Tulbana.	Wukeels' Fees.	TOTAL.		
Rs. a. p.	Rs. a. p	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	
- - -	350 - -	250 - -	2 -	- - -	291 5 7	543 5 7	902 5 7	
- - -	(611 4 -)	- - -	(2 - -)	- - -	(291 5 7)	(293 5 7)	(904 9 7)	
- - -	970 4 -	250 - -	4 - -	- - -	582 11 2	836 11 2	1,806 15 2	
- - -	602 6 6	250 - -	8 - -	- - -	301 3 7	559 3 7	1,161 10 1	
- - -	(371 11 6)	- - -	(2 - -)	- - -	(301 3 7)	(303 3 7)	(674 15 1)	Both parties being present.
- - -	974 2 -	250 - -	10 - -	- - -	602 7 2	862 7 2	1,836 9 2	
6 - -	441 4 -	350 - -	26 - -	- - -	433 14 9	809 14 9	1,251 2 9	
(32 - -)	(828 4 -)	- - -	(30 - -)	- - -	(433 14 9)	(463 14 9)	(1,292 2 9)	
38 - -	1,269 8 -	350 - -	56 - -	- - -	867 13 6	1,273 13 6	2,543 5 6	
15 - -	512 7 -	350 - -	10 - -	- - -	401 14 9	761 14 9	1,274 5 9	
(1 6 -)	(981 2 -)	- - -	- - -	- - -	- - -	- - -	(981 2 -)	
16 6 -	1,493 9 -	350 - -	10 - -	- - -	401 14 9	761 14 9	2,255 7 9	
2 3 -	717 6 3	250 - -	6 - -	- - -	349 - -	605 - -	1,322 6 3	*N.B.*—The costs of Wukeels' fees in this case, on the Respondents' side, arise from each Respondent having answered separately.
- - -	(2,412 11 -)	- - -	- - -	- - -	- - -	- - -	(2,412 11 -)	
2 3 -	3,130 1 3	250 - -	6 - -	- - -	349 - -	605 - -	3,735 1 3	Disposed of in appeal without Respondents being summoned.
- - -	1,494 7 3	700 - -	2 - -	- - -	777 7 3	1,479 7 3	2,973 14 6	*N.B.*—The costs of Wukeels' fees in this case, on Respondents' side, arise from their having appointed separate Pleaders, and having entered separate answers.
- - -	(3,125 13 -)	- - -	- - -	- - -	- - -	- - -	(3,125 13 -)	
- - -	4,620 4 3	700 - -	2 - -	- - -	777 7 3	1,479 7 3	6,099 11 6	
27 9 6	434 3 -	250 - -	4 - -	- - -	307 6 8	561 6 8	995 9 8	
(6 9 -)	(761 10 6)	- - -	(4 - -)	- - -	(307 6 8)	(311 6 8)	(1,073 1 2)	
34 2 6	1,195 13 6	250 - -	8 - -	- - -	614 13 4	872 13 4	2,068 10 10	
- - -	342 - -	250 - -	8 - -	- - -	285 - -	543 - -	885 - -	
(22 8 -)	(627 - -)	- - -	(14 - -)	- - -	(285 - -)	(299 - -)	(926 - -)	Both parties being present.
22 8 -	969 - -	250 - -	22 - -	- - -	570 - -	842 - -	1,811 - -	
- - -	287 11 -	250 - -	2 - -	- - -	285 10 9	537 10 9	825 5 9	Besides the Appellant, there were, in the original suit, four other Defendants, who have not appealed, and whose expenses in the Lower Court have not been incorporated here, viz. Rs. 1,170. 12.
- - -	(566 15 -)	- - -	(2 - -)	- - -	(285 10 9)	(287 10 9)	(854 9 9)	
- - -	854 10 -	250 - -	4 - -	- - -	571 5 6	825 5 6	1,679 15 6	
17 2 -	554 3 -	250 - -	4 - -	- - -	256 11 -	510 11 -	1,064 14 -	*N.B.*—The costs of Wukeels' fees in this case, on the Respondents' side, arise from each Respondent having answered separately.
- - -	(521 7 6)	- - -	- - -	- - -	- - -	- - -	(521 7 6)	
17 2 -	1,075 10 6	250 - -	4 - -	- - -	256 11 -	510 11 -	1,586 5 6	
- - -	528 8 3	50 - -	2 - -	- - -	54 3 5	106 3 5	634 11 8	The Appellant has appealed only respecting a portion of his original claim, which had been dismissed by the Lower Court.
- - -	(269 4 3)	- - -	- - -	- - -	- - -	- - -	(269 4 3)	
- - -	797 12 6	50 - -	2 - -	- - -	54 3 5	106 3 5	903 15 11	Disposed of in appeal without Respondents being summoned.
- - -	- - -	350 - -	2 - -	- - -	450 - -	802 - -	802 - -	This case was decided ex parte; also in Court of First Instance.
- - -	(821 15 6)	- - -	- - -	- - -	- - -	- - -	(821 15 6)	
- - -	821 15 6	350 - -	2 - -	- - -	450 - -	802 - -	1,623 15 6	

APPENDIX B.—*continued.*

No. 2.

STATEMENT, showing Cost of Litigation in a Case of Special Appeal, from its Institution in Court

Number of Case.	NAMES OF PARTIES.		Amount of Claim.	Description of Suit.*	Expenses in Court of First Instance.					
					Institution Fee.	Other Stamps.	Tulbana.	Wukeels' Fees.	Diet of Witnesses and Ameens' Fees.	TOTAL.
			Rs. a. p.		Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
78 of 1850	Shunkur Rai and others - - -	Defts. Appts.	39 - -	- - Possession of Land by expunging from the Collectorate Records the Names of Defendants -	- - -	- - -	4 - -	2 - -	- 8 -	6 8 -
	v. Koonj Beharee and others - -	Plffs. Respts.			4 - -	- - -	6 6 -	2 - -	- - -	12 6 -
					4 - -	- - -	10 6 -	4 - -	- 8 -	18 14 -
104 of 1850	Dya Gunosh and others - - -	Defts. Appts.	30 - -	- - Possession of a piece of Land opposite a dwelling-house	- - -	5 8 -	- 12 6	1 8 -	1 14 -	9 10 6
	v. Maan - - - - - -	Plff. Respt. -			2 - -	2 - -	4 5 6	1 8 -	- 13 -	10 10 6
					2 - -	7 8 -	5 2 -	3 - -	2 11 -	20 5 -
184 of 1844	Unroodh Singh - - - -	Plff. Appt. -	700 - -	- - Possession by Redemption	32 - -	3 - -	3 - -	35 - -	32 - -	105 - -
	v. Raja Dumur Singh - - -	Deft. Respt. -			- - -	4 - -	- - -	35 - -	- - -	39 - -
					32 - -	7 - -	3 - -	70 - -	32 - -	144 - -
85 of 1850	Bukshoo - - - - - -	Plff. Appt. -	26 - -	- - Possession of a piece of Building-ground -	2 - -	- - -	6 6 -	1 5 3	- - -	9 11 3
	v. Syud Ellhee Buksh Khan - -	Deft. Respt. -			- - -	- - -	1 2 -	1 5 3	3 - -	5 7 3
					2 - -	- - -	7 8 -	2 10 6	3 - -	15 2 6
98 of 1850	Soomair Singh - - - -	Deft. Appt. -	330 6 9	- - Possession of Right in a Zemeendaree Estate under Deed of Sale -	- - -	20 8 -	1 - -	16 8 -	- - -	38 - -
	v. Ajoodeea Pershad - - - -	Plff. Respt. -			32 - -	15 - -	3 - -	16 8 -	- - -	66 8 -
					32 - -	35 8 -	4 - -	33 - -	- - -	104 8 -
107 of 1850	Aloop Rae and others - - -	Defts. Appts.	100 - -	- - Possession of Land by cancelment of Settlement - -	- - -	- - -	- 12 -	5 - -	- - -	5 12 -
	v. Sukhawut Alli and others - -	Plffs. Respts.			8 - -	- - -	2 10 -	5 - -	- - -	15 10 -
					8 - -	- - -	3 6 -	10 - -	- - -	21 6 -
37 of 1848	Bhissul Singh - - - -	Deft. Appt. -	230 15 6	- - Claim on Rooqua or Note of Hand - -	- - -	- - -	14 8 -	11 8 9	- - -	26 - 9
	v. Jowahir Mull - - - - -	Plff. Respt. -			16 - -	- - -	16 11 6	11 8 9	- - -	44 4 3
					16 - -	- - -	31 3 6	23 1 6	- - -	70 5 -
151 of 1848	Bikurmajeet - - - - -	Deft. Appt. -	82 10 -	Claim on Bond	- - -	1 - -	- - -	4 2 -	- - -	5 2 -
	v. Thumun Singh - - - -	Plff. Respt. -			8 - -	- - -	2 10 -	4 1 9	- - -	14 11 9
					8 - -	1 - -	2 10 -	8 3 9	- - -	19 13 9
180 of 1847	Elihee Buksh - - - - -	Deft. Appt. -	42 2 3	- - Claim for Land Rent -	- - -	- - -	- - -	2 1 9	- - -	2 1 9
	v. Mr. French - - - - -	Plff. Respt -			4 - -	- - -	- 8 -	2 1 9	- - -	6 9 9
					4 - -	- - -	- 8 -	4 3 6	- - -	8 11 6
6 of 1850	Hoormut Khan and others - -	Plffs. Appts. -	221 - -	Claim on Bond	16 - -	- - -	3 12 -	11 1 -	- - -	30 13 -
	v. Ruttay Khan and another - -	Defts. Respts.			- - -	- - -	- 12 -	11 1 -	- - -	11 13 -
					16 - -	- - -	4 8 -	22 2 -	- - -	42 10 -
111 of 1847	Jokhoo Loll - - - - -	Plff. Appt. -	575 13 6	- - Claim, recovery of Money advanced on Mortgage -	32 - -	13 - -	2 4 -	28 12 6	- - -	76 - 6
	v. Kishn Koornar and others - -	Defts. Respts.			- - -	10 8 -	- - -	86 5 6	- - -	96 13 6
					32 - -	23 8 -	2 4 -	115 2 -	- - -	172 14 -
108 of 1847	Ram Ruttun Singh and another -	Plffs. Appts. -	506 8 -	- - Claim, Rent of Land - -	32 - -	5 8 -	2 - -	25 5 3	- - -	64 13 3
	v. Sheikh Sadik Alli - - - -	Deft. Respt. -			- - -	4 8 -	- 10 -	25 5 3	- - -	30 7 3
					32 - -	10 - -	2 10 -	50 10 6	- - -	95 4 6

APPENDIX B.—*continued.*

No. 2.

of Original Jurisdiction to Final Termination in Special Appellate Court (Sudder Dewanny Adawlut).

Expenses in Lower Appellate Court.					Expenses in Special Appeal.					AGGREGATE of the Three TOTAL COLUMNS.	
Institution Fee.	Other Stamps.	Tulbana.	Wukeels' Fees.	TOTAL.	Institution Fee.	Other Stamps.	Tulbana.	Wukeels' Fees.	TOTAL.		
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	
- - -	6 8 -	- - -	2 2 3	8 10 3	4 - -	2 - -	- - -	1 15 3	7 15 3	23 1 6	
4 - -	5 8 -	4 12 -	2 2 3	16 6 3	- - -	2 - -	- - -	1 15 3	3 15 3	32 11 6	
4 - -	12 - -	4 12 -	4 4 6	25 - 6	4 - -	4 - -	- - -	3 14 6	11 14 6	55 13 -	
- - -	3 - -	- - -	1 8 -	4 8 -	2 - -	4 - -	- - -	1 8 -	7 8 -	21 10 6	
2 - -	2 - -	1 13 -	1 8 -	7 4 -	- - -	6 - -	- - -	1 8 -	7 8 -	25 6 6	Both parties being present.
2 - -	5 - -	1 13 -	3 - -	11 12 -	2 - -	10 - -	- - -	3 - -	15 - -	47 1 -	
- - -	2 - -	- - -	35 - -	37 - -	32 - -	7 - -	- - -	35 - -	74 - -	216 - -	
32 - -	6 8 -	3 - -	35 - -	76 8 -	- - -	2 - -	- - -	35 - -	37 - -	152 8 -	
32 - -	8 8 -	3 - -	70 - -	113 8 -	32 - -	9 - -	- - -	70 - -	111 - -	368 8 -	
2 - -	5 8 -	1 8 -	1 10 -	10 10 -	2 - -	4 - -	- - -	1 4 9	7 4 9	27 10 -	
- - -	5 5 -	- - -	1 10 -	6 15 -	- - -	- - -	- - -	- - -	- - -	12 6 3	
2 - -	10 13 -	1 8 -	3 4 -	17 9 -	2 - -	4 - -	- - -	1 4 9	7 1 9	40 - 3	
- - -	1 8 -	- - -	16 8 -	18 - -	16 - -	4 - -	- - -	8 4 -	28 4 -	84 4 -	The Special Appeal was only for a portion of the Claim which had been decreed against Defendant
32 - -	- 8 -	2 - -	16 8 -	51 - -	- - -	- - -	- - -	- - -	- - -	117 8 -	
32 - -	2 - -	2 - -	33 - -	69 - -	16 - -	4 - -	- - -	8 4 -	28 4 -	201 12 -	Disposed of without Respondents being summoned.
8 - -	6 8 -	1 4 -	5 - -	20 12 -	8 - -	2 - -	- - -	5 - -	15 - -	41 8 -	
- - -	6 8 -	- - -	5 - -	11 8 -	- - -	- - -	- - -	- - -	- - -	27 2 -	
8 - -	13 - -	1 4 -	10 - -	32 4 -	8 - -	2 - -	- - -	5 - -	15 - -	68 10 -	
- - -	1 8 -	- - -	11 9 -	13 1 -	16 - -	2 - -	- - -	10 2 6	28 2 6	67 4 3	
16 - -	2 3 -	1 8 -	11 9 -	31 4 -	- - -	2 - -	- - -	10 2 6	12 2 6	87 10 9	
16 - -	3 11 -	1 8 -	23 2 -	44 5 -	16 - -	4 - -	- - -	20 5 -	40 5 -	154 15 -	
8 - -	2 - -	- 8 -	4 1 8	14 9 8	8 - -	8 - -	- - -	4 1 6	20 1 6	39 13 2	
- - -	- 8 -	- - -	4 1 -	4 9 -	- - -	2 - -	- - -	4 1 6	6 1 6	25 6 3	Both parties being present.
8 - -	2 8 -	- 8 -	8 2 8	19 2 8	8 - -	10 - -	- - -	8 3 -	26 3 -	65 3 5	
4 - -	3 - -	- - -	2 1 6	9 1 6	4 - -	2 - -	- - -	2 1 6	8 1 6	19 4 9	
- - -	2 8 -	- - -	2 1 6	4 9 6	- - -	2 - -	- - -	2 1 6	4 1 6	15 4 9	
4 - -	5 8 -	- - -	4 3 -	13 11 -	4 - -	4 - -	- - -	4 3 -	12 3 -	34 9 6	
- - -	2 4 -	- - -	11 - -	13 4 -	16 - -	2 - -	- - -	11 - -	29 - -	73 1 -	
16 - -	2 12 -	1 - -	11 - -	30 12 -	- - -	- - -	- - -	- - -	- - -	42 9 -	
16 - -	5 - -	1 - -	22 - -	44 - -	16 - -	2 - -	- - -	11 - -	29 - -	115 10 -	
32 - -	2 8 -	- - -	28 - -	62 8 -	32 - -	6 - -	- - -	28 12 6	66 12 6	205 5 -	
- - -	2 - -	- - -	- - -	2 - -	- - -	- - -	- - -	- - -	- - -	98 13 6	Disposed of without Respondents being summoned.
32 - -	4 8 -	- - -	28 - -	64 8 -	32 - -	6 - -	- - -	28 12 6	66 12 6	304 2 6	
- - -	4 8 -	- 10 -	25 5 3	30 7 3	32 - -	4 - -	- - -	24 - -	60 - -	155 4 6	
32 - -	4 8 -	- 10 -	25 5 3	62 7 3	- - -	- - -	- - -	- - -	- - -	92 14 6	
32 - -	9 - -	1 4 -	50 10 6	92 14 6	32 - -	4 - -	- - -	24 - -	60 - -	248 3 -	

APPENDIX C.

Appendix C.

PAPER referred to in the Evidence of H. LUSHINGTON, Esq., 26th April 1853, Quest. 4612, p. 527.

NOTES ON TRIAL BY JURY.

(No. 33, Enclosure.)

FOURTEEN years have elapsed since Regulation VI. of 1832 was promulgated, a period sufficiently extended to give that enactment a fair trial.

It was declared at the time (Secretary to Government, Judicial Department, to Register Sudder Dewanny Adawlut, 16th October 1832) to be an experimental measure, and the hope was expressed, that "by means of it, information might be elicited to enable the Government to judge of the practicability and expediency of introducing throughout the country an efficient system of trial by jury."

The Government cannot have lost sight of this very important subject, and they are doubtless in possession of full information; nevertheless, the experience of 20 years, a sincere interest in the welfare of the native community, and the desire to be in some degree instrumental in conferring upon them the blessings of our noble institution, have encouraged me to record the following observations on the expediency and practicability of extending and improving the provisions of Regulation VI. of 1832, and of fixing the mode of procedure under that law.

The idea of settling any disputed point by the "verdict," or declared opinion, of their "equals" or brethren, has ever been familiar to the natives of India. The popularity and extensive use of the punchayet in past times are points upon which no two opinions are now held; "Punjmen Purmeshur," was a proverb before the Kings of Delhie granted to Englishmen the Dewanee of Bengal; it is so still; and if we were to carry our inquiries no further than into the private history of our domestic attendants, we should learn with surprise how constantly and how seriously their persons and property are affected by the decision of punchayets, and we might conclude, from their silent acquiescence, that the presence of the Deity was still acknowledged.

No officer of Government can have failed to observe how frequently the name of "punchayet" occurs in all judicial proceedings. The party whose interest it is to quote the decision of the arbitrators may not be able to prove it so circumstantially as might be required to render it evidence in a court of justice; but the instances in which the punchayets are alluded to in the pleadings, are innumerable, and rarely are they so alluded to without their having had existence.

Still more frequent have been the opportunities of observing the extensive use of punchayets possessed by the late settlement officers. From my own experience, I can safely say, that, except in the uncultivated parts of the country, I scarcely ever investigated any purely village question, which had not, at sometime or other, been brought before a punchayet. The heads of villages, and of larger divisions, have not now the local influence which they exercised under the native government, and to this may in some measure be attributed the disobedience of the losing party to the decision of the arbitrators of the present day. Section 3, Regulation VI. of 1813, than which no law has been enacted more consonant with the habits, or more suitable to the character of the people, was well calculated to remedy this evil, though its provisions have become of less moment since the completion of the settlements.

Yet the weight which attaches to the decisions of punchayets, not only amongst themselves, but even when brought before our civil and criminal courts, is as great as if they had emanated from any regularly constituted tribunal; indeed I question whether any Judge would interfere with the finding of a punchayet upon a matter of fact (which is the point now) if he were satisfied that the members, having been appointed with the consent of the parties, had held sittings, and come to a determination. I will here mention very shortly only two instances which have particularly struck me, one of which passed before me officially.

In the Sudder Dewanny Adawlut of the Presidency, the claim of a woman to property, which had devolved on her at the death of her parents, was dismissed, because a punchayet had before decided that she had forfeited her claim by her profligate conduct. [*See* Select Report, Sudder Dewanny Adawlut, vol. 2, page 257.]

A woman was unfaithful to her husband; a punchayet excommunicated him; and he, in consequence of the excommunication, not of the infidelity, murdered his wife, and was sentenced to perpetual imprisonment. This is not a happy instance of the value of punchayets; but at present our concern is with their power. The punchayet here alluded to caused the death of the woman, and indirectly saved the man from capital sentence.

Appendix C.

I shall in another place record the result of my personal experience as to the general fitness of natives of the middle classes for the office of juror, and of the accuracy of their verdicts. As members of a punchayet, their competency has never been questioned amongst themselves, neither need we trouble ourselves to doubt it; and in regard to accuracy, had they been often wrong, the people would have ceased to recognise the divinity of their decisions.

This accuracy has no doubt been obtained in a very great degree by the operation of a principle once admitted in English law; viz., that private knowledge of facts had as much right to sway the judgment of a jury, as the evidence delivered in court. The native arbitrators were generally persons taken from the neighbourhood (*de vicineto*), and might have brought in a verdict whether proof was produced by either party or not. Could we secure the services of such persons on juries, we should doubtless derive full advantage from their local information, except in particular cases, where their respect for caste or other prejudices interfered with the integrity of their judgment; but, under the present system, no persons would be available for juries except those who resided near the Sudder station, and these would not possess any of that "private knowledge of the facts" which I believe to have contributed largely to the character of infallibility enjoyed by Indian punchayets. Nevertheless there is much left of which we ought to avail ourselves; and we may relinquish without regret any benefit supposed to be derivable from privately informed juries, when we remember that reliance on them is by many persons considered dangerous.

Let it not be supposed that I reason under the influence of any supposed analogy between England and India; there cannot be a principle less fitted to guide our judgment in the affairs of this country; but if there be resemblance in any two of their institutions, it is between the jury of England and the punchayet of India, a resemblance which will be much stronger, if, in making the comparison, we take the former as they were in the days of the Plantagenets; both will then partake of the character of compurgators, and I desire to interfere no more with the pure native punchayet than is necessary to deprive it of this character. The natives, who find the facts, should be neither compurgators, members of a punchayet, nor assessors, but essentially jurymen.

The difference between a jury who possess a private knowledge of facts, and a jury who form their opinion upon the evidence submitted to them, is so great, that some persons have denied that any parallel at all could be drawn between them; and they believe that when punchayets, under the name of juries, cease to have a knowledge of facts, their decisions will be no better than those of a European Judge. I differ entirely from those who entertain this opinion. The possession of private information may be desirable, especially in India; but even if they do not possess this advantage, the natives are more able than ourselves to weigh the evidence of their own countrymen, and to estimate the value of circumstantial proof. Their intimate acquaintance with the innumerable and peculiar customs of the people, and of the agricultural population in particular, enables them to detect a falsehood when a European would have no idea of it, and to suggest questions which would never occur to a stranger. I am writing here not what I think, but what I have witnessed repeatedly; and I cannot too strongly deprecate the opinion that respectable natives, without private knowledge, are not better able to ascertain facts than the European Judges themselves.

However highly esteemed and valued by the people of England trial by jury may be, trial by punchayet is more valuable to the people of India. Many Englishmen have held that trial by jury was useful only in times of difficulty and danger, and that it was precious rather as a political than as a judicial institution. They have more confidence in the judgment of one man of talent, education, integrity and experience, than they have in the impression produced by evidence upon 12 ordinary men; and, except in times of public excitement, they had rather be tried without a jury than with one. I do not depreciate the merits of the Company's Judges if I say that such extreme confidence can never be justifiably placed in them. They are too widely separated from the natives by language, religion, habits of life, and modes of thinking, to deserve the unbounded trust placed by Englishmen in their own Judges. There would seem to be some natural impediment to the amalgamation of the two races. In what country would men pass the whole of their lives amongst intelligent natives without associating with them beyond a formal and occasional visit, and this, too, when they are denied all other society? In what other country would they, for 20 or 30 years, incessantly use the language of the natives, and yet rarely be able to express themselves in it with tolerable accuracy? In what other country would men be engaged from youth to age in fiscal and judicial duties, without at the last understanding the allusions to his habits, prejudices and superstitions made by every peasant who stands before them? Doubtless there are many exceptions, many officers whose acquirements are far superior to the average here described; but, generally speaking, the picture is not over-drawn; and it cannot be supposed that such Judges are as competent to decide upon facts as a body of moderately intelligent natives, who are thoroughly conversant with the peculiarities of the various castes and classes which inhabit this country. One of the best judges of the native character who ever rose to distinction in India (Sir Thomas Munro), has left it as his opinion, that "until the use of the punchayet in criminal cases was adopted, facts would never be so well found as they might be."

If the members of a jury were so dishonest as some people suppose, prisoners would frequently object to the individuals who compose it; they would "challenge:" and it is to be remembered, that in many cases the prosecutors in India would be just as likely to bribe or influence as the prisoners; yet in no one instance have I ever heard objections urged to the individuals who composed a jury, though I have invariably invited them. Avail-

Appendix C.

able jurymen are often much sought for, and if the occupation were profitable in any way, the people would not be so reluctant to attend.[*]

They are hard to convince, I think; but I have a better opinion of their ability and integrity than that which is entertained by many.

The high opinion of the decisions of Europeans entertained by the natives, allowing it to be as sincere as we all readily admit it to be, arises from their confidence in our disinterestedness and our integrity, not from any idea of our superior penetration and acumen; and we see every day how contentedly they submit to injustice if they are satisfied that pains have been taken to ascertain the truth. This may satisfy them; it ought not to satisfy us; and if by the introduction of trial by jury, under certain modifications, we can interweave the local knowledge of the punchayet with the laborious integrity of the European Judge, and thus attain to a nearer approximation to the truth, we shall have taken one great step towards the improvement of the condition of the natives, and shall be entitled to the gratitude of the most enduring people upon earth.

We have moreover introduced some change into the spirit and principles with which natives formerly prosecuted inquiries, and the innovation has not unfrequently been productive of wrong. Our respect for an oath has led us to attach the utmost importance to direct evidence; and until we are startled from our credulity by equally direct evidence on the other side, we refuse to allow ourselves to be (as we should say) unduly influenced by circumstances and impressions. The natives of India do not abhor perjury as we do, and it may be questioned whether the enactments regarding the administering of oaths have not aggravated the evil. Direct evidence thus becomes of less value, and we can supply the deficiency only by availing ourselves of the services of those who are able to draw their conclusions from other sources.

Besides the advantages to all concerned in court, some collateral benefit may be anticipated from the consideration which jurors will receive from their own countrymen; some moral effect may be hoped for from the nature of the duties upon which they will be engaged; the trust reposed in them will have a tendency to raise their national character, and to create in their minds an interest in the general welfare of the people. The Judge would learn from them, and they would learn from the Judge, and both parties would profit by the association.

I feel, whilst I write this, the reception which it will receive from many persons neither deficient in judgment, nor careless of the well-being of the natives. They will abruptly reject the idea of all these consequences, flowing from the mere attendance of a half-willing bunneeah, or an illiterate zumendar, and will condemn as premature, if not visionary, any efforts to raise their character, by giving them so minute a share in the internal administration of the country. It is indeed to be feared that the natives will not at first appreciate the boon which it is proposed to offer them; that the prisoner will not on all occasions be very solicitous whether he is tried by a Judge or by a jury; and that the jurors themselves will at first attend unwillingly. We ought not for such reasons to resign in despair the task of improving their moral condition. The resources of the native mind, like the resources of their country, require to be developed; there are hidden treasures in both: and the apathy and selfishness which seem to be wrapped round the hearts of the Hindostanies, are not more unpromising than the dry grass and barren rocks which conceal the locality of a gold mine. All experiments which have hitherto been made by employing the natives in offices of trust and importance have been successful. These persons, it is true, have been the most highly educated and most intelligent; but we begin at the wrong end if we strive to raise those only who have already succeeded in raising themselves. Let us now try the classes a few degrees below them, and let us hope that we shall not only find them as competent to the duties assigned them as our Principal Sudder Ameens and deputy collectors have proved themselves in their spheres, but that they will ultimately set a due value upon the trust which has been reposed in them, and become aware that they have taken the first step towards governing themselves. The improvement of a people is not the work of a day. The nature of the bunneeah or zemeendar will not be altered by the passing of a law. It is enough that the operation of that law should be acknowledged to have a beneficial tendency; and we need not fear that any peculiarity in the physical or mental constitution of the native of India should permanently blind him to the merits of an institution which, after the experience of centuries, Europe has pronounced to be good.

Are we, then, to introduce the system entire, or must we still be contented with an approximation? My opinion is, that we should confine the trial by jury to criminal cases. Compulsory attendance will at first be felt as a hardship, and will create feelings hostile to the growth of those sentiments which we are anxious to foster. If we require that all civil suits shall be tried with the assistance of a jury, the number of persons summoned will be very great, and the inconvenience will be proportionate. Every Moonsiff must have a jury; and unless his court could be itinerant, it would be scarcely practicable to supply him without subjecting

---

[*] *Note.*—"Cases have occurred, no doubt, in which jurors have not been influenced; but where they think the prisoner guilty, they often shrink from the odium of an honest verdict, if he be a man of any mark and position. Beyond the walls of the court-house no recompense for this odium awaits them, as in England, in the shape of public applause; neither does a dishonest finding subject them to even the feeblest visitation of public censure. It must very often have happened, too, that they have not been bribed only because the result of the trial does not rest with them."

"(signed) H. W. DEANE."

Such is the opinion of one by no means incompetent to judge. All he says is true, to a certain extent; and I insert the note because I am seeking for truth, not advocating any particular measure.

subjecting the people to intolerable inconvenience. I speak comparatively when I say that Moonsiffs do not urgently require the assistance of juries, except in particular cases, whilst European Judges are now Judges of Appeal almost exclusively, and juries are rarely required in the disposal of this class of cases.

I merely touch upon this part of the subject, although it deserves serious consideration, if it be determined to introduce trial by jury into civil as well as criminal courts. For the present, however, the difficulty of procuring jurymen for all the Moonsiffs' cutcherries, the magnitude of the advance made by introducing the system even into our criminal courts, and the caution which is necessary in applying European principles to the government of India, have satisfied me that it will be wiser, first, to introduce the system there, where it is most wanted, and most likely to be valued: I shall not be sorry to find that, in the opinion of those with whom the decision rests, the introduction of the entire system is safe and practicable; but my own impression is, that it should be confined as yet to the criminal courts. Regulation VI. of 1832 might remain as it stands now; and all civil suits, the decision of which called for the assistance of natives, might still be disposed of according to the provisions of that enactment.

Experience.

Before we proceed to the detailed arrangements which will be necessary in carrying out the plan (and those will be numerous and troublesome), it is proper to consider how far the working of the experimental law warrants the extension of the principle upon which it was framed.

Upon this point my information is, of course, totally deficient; for, in the isolated position occupied by most functionaries in this country, they have little opportunity of profiting by the experience of each other. The Sudder Court will gather in this information from the several districts, and the result of the experience of many will decide those questions upon which the opinion of one can be of little value.

Yet I have not been engaged in judicial duties for six years without having gained some personal acquaintance with the subject, and to no one point in the civil or criminal administration of the country has my attention been turned with greater interest and constancy than to the working of Regulation VI. of 1832.

The first question naturally is, whether juries have hitherto found the facts as correctly as the European Judges, aided by the law officers, could have done. No one can directly answer this question. The officers who report upon the subject will give their own opinion, and the merit of those opinions must rest entirely upon the general character for ability, judgment and liberality of sentiment of those who maintain them. Even then conclusions must be drawn with infinite caution; for it is in human nature to prefer our own view of a case; and where a difference of opinion has occurred between a Judge and the jury, it is not improbable that the former will attribute it to the incapacity of the latter, rather than to any error of his own. It is waste of time to speculate upon that which cannot be usefully discussed without examining the returns from the several zillahs, and perusing the reports which it is assumed, will be required from the Judges whenever the question comes under consideration.

My own opinion is in favour of their decisions. I have never tried a criminal case without a jury. At Goruckpore, Ally-Gurk, Saharunpoor, Futtehpoor, and Moradabad, juries have invariably attended, and the instances in which I have set aside the verdict have been exceedingly rare. In some cases I do not deny that difference of opinion has existed; but unless the grounds of my opinion were sufficiently strong to warrant the setting aside of theirs, it may be allowed to be at least doubtful which of the two was right. I have never observed any arbitrary character in their verdicts; and in the conversations which I have not thought it irregular to hold with them after the case was finally disposed of, I have invariably found that they had paid attention to the proceedings, and were able to give a plausible, if not a satisfactory reason for any opinion which they may have entertained, and which, perhaps, to me had appeared unaccountable.

To assume that juries were wrong because they differed with the Judge, would be to assume that they were useless, except as a political institution.

Certainly, I have fancied on several occasions that the jurors were anxious to discover what my own opinion was; I may be doing them injustice, but it is not surprising that men, unaccustomed to the performance of judicial functions, should look anxiously for the support of their superiors, and, not having yet grasped the idea of independence, should meet their countrymen out of court with more pride and self-satisfaction when their verdict had been upheld, than they would have done had it been tacitly condemned. I see nothing very alarming in this; and, moreover, it would cease the moment their decisions were invested with legal force. It is much more astonishing that we should have been able to get respectable persons to attend to the proceedings, and to give in any verdict at all, when they know that their labour may be rendered superfluous, and almost ridiculous, by the silent neglect of the opinion delivered into court by them. It is sufficient to dishearten the most zealous, find that their aid had been solicited as a favour, and then rejected as good for nothing; and I confidently expect, that whenever the verdict is not liable to be set aside summarily, the natives will give their attendance with much greater alacrity, and that they will apply themselves to the discovery of the truth with energy, cheerfulness and perseverance.

It has been said that integrity is not to be expected from that class of natives from which the jurors must be drawn, exposed as they will be to every species of persuasion, and tempted to forget their honesty in the discharge of irresponsible duties. Upon this much-discussed question I shall here simply state the result of my own observations, leaving it to others to determine how far the general moral character of the natives entitles them to the privileges which it is proposed to confer upon them.

C. The cases within my own knowledge in which any opportunity has been afforded* for tampering with a jury must have been very few indeed, and those cases were well known to the European functionaries, who were, therefore, on their guard to prevent collusion. Few prisoners have the means of bribing; and in cases where religion or relationship might be supposed to have an influence, authority supplied the check which must hereafter be sought for in that improvement in the character of the people which the exercise of constitutional privileges will tend to produce. As far as my own experience goes, I see no reason to expect more than occasional evil from want of integrity, and that only at first. It has been urged that the natives of this country are unfit for witnesses, and that those who are unfit for witnesses, are unfit for jurors. I doubt whether this deserves grave refutation; one consideration alone seems to me to destroy all analogy, namely, that all classes of the natives are not equally unfit for witnesses, and the average of jurymen will be drawn from a class superior to that from which the average of witnesses are now drawn. Besides this, the witnesses in all civil, and in most criminal cases, are partisans; and if proper precautions are taken, it would be impossible to influence the jury, because no one would know what particular individuals would be impanneled. I find no fault, generally speaking, with the evidence of any traveller, or the like, to an affray, though the evidence in such cases is proverbially unworthy of credit; and I think, upon the whole, that we may calculate upon the same degree of integrity in jurymen as we now find in a disinterested witness of the same class; and, lastly, experience, the safest guide of all, has convinced me of the fact, that witnesses are not to be trusted, and that jurymen are. Hardly a single case has come before me in which the veracity of some of the witnesses has not been impugned, yet I have never heard any serious charge against the integrity of a jury: whether this arises from the causes hinted at in a note to a former passage, or from causes more honourable to the natives, is not of so much importance as it may at first appear to be. If by any means we can keep out dishonesty, we shall have gained our end, and secured the services of natives in "finding facts." The natives of the east, as well as those of the west, can affect a virtue when they have it not; and one of the best ways of inducing men to act virtuously, is to give them credit for virtues which they never possessed. If I were not afraid of wandering too far from my subject, I should here expatiate upon the assumed virtue of the natives. It will startle an European moralist to hear it asserted, that many of our ablest and most upright native functionaries enjoy the credit of having assumed integrity; the idea, however, and the practice, are both perfectly familiar to the natives. They may adopt honesty very much in opposition to their natural inclinations; but if they persevere in adherence to the rules of the order to which they have attached themselves, the result is integrity, and our end is gained.

The magistrates, I fear, will not be unanimous in favour of juries, and if they were consulted, I should not be surprised to find some distinguished names amongst those who are hostile to the measure. In cases committed by themselves, they have occasionally suspected the honesty of a verdict for acquittal; and though all my inquiries have failed in ascertaining that those suspicions were well founded, the mere fact of their retaining the impression prevents my hurrying to a conclusion. On the other hand, the case before the Sessions Judge is very often entirely different from the case which appeared before the magistrate, and unless the latter went through all the proceedings held in the trial, he could scarcely be competent to judge of the propriety of the verdict. Magistrates must also be supposed to have some little bias in cases committed to the sessions, which they themselves have already examined, and upon which they have already formally declared their opinion.

Jurors attend reluctantly, but their objections are not insuperable. I have become acquainted with several very intelligent and well-informed natives who had never been in the habit of visiting Europeans, and who came to see me, at my invitation, to explain privately the grounds upon which they prayed to be excused. The number of those who insisted upon the privilege of exemption has been small—so small as never materially to interfere with my proceedings; but if the utmost caution had not been used in granting the indulgence, as it was termed, and every effort made to attach disgrace to inability to sit as a juror, I should more than once have been reduced to difficulty. When once assembled, they are for the most part attentive and cheerful; and I have been forcibly struck by the rapid change of demeanor which often occurs in the jurors as soon as the case is opened. The air of ignorance, helplessness and immobility is laid aside, and in its place appear an acuteness and an interest in the case which surpassed all my expectations. The magic change, however, is not to be effected without an effort; they must be courteously treated, encouraged, perhaps even humoured, ere the wand of Comus ceases to move over them.

It is, I think, in some official paper at Suharunpoor, that I found the assertion, that no difficulty had been experienced in procuring jurors. When I went there, I found considerable difficulty; and it would be worth while to inquire by what means this disinclination had been overcome in the different zillahs. It is always easy to compel the attendance of vakeels and mookhtars, and there are always a few persons hanging about the cutcherries, who may be pressed into the service; but such attendance as this affords no criterion of the facility of procuring voluntary assistance; nor could we with safety draw any conclusions from the proceedings of such ill-constituted bodies.

The Hindoos appear, generally speaking, to take a smaller share in the investigation than the Mahomedans. These latter ordinarily take the lead, put questions to the witnesses, and probably dictate, if permitted, when they retire to consult upon the verdict. This might be expected from the characters of the two people, and from the relative political position in which they have for centuries been placed.

Nothing

Nothing of this difference is, however, discernible amongst the more highly educated classes, and it is fairly presumable that it will cease to be apparent amongst those to whom my remarks apply, so soon as they shall find themselves publicly treated with the same deference, and equally consulted in the administration of justice.

The number of jurors which I have usually employed is five; I should have preferred a larger number, but contented myself with these, for obvious reasons. One of the five was required to be familiar with the Persian character, capable of expressing clearly in writing the opinion of the jury, and of referring to the record should it be deemed necessary to do so. This foreman has been generally one of the vakeels of the court, all of whom acted in that capacity in rotation, and who, whether able or unable to conduct civil suits, have almost without exception proved themselves perfectly competent to the discharge of this particular duty. This practice of invariably employing an *ex-officio* foreman is, of course, only tolerated, and must be discontinued whenever his services can be safely dispensed with; but my object here is rather to show how I brought the law into operation, than to suggest new provisions; that will come under our consideration in another place.

The remaining four jurors were drawn from respectable residents, zemindars, mehajuns and shopkeepers, not from the mookhtars of the cutcherries. The same individual never appeared often enough for me to recognize him; few, therefore, could be familiar with the duty about to be assigned to them; yet they never seemed irrecoverably confused, or behaved in an unbecoming manner. Occasionally, on seeing a juryman take his seat, whose appearance bespoke him more than usually ignorant of the ways of the court, I have inquired of him whether he understood the nature of the duty he was called upon to perform, and the answer has always been given me in the word "punchayet;" the inhabitants of cities would perhaps use the word "assessors," but the village zemindars, the peasants, speak of the "punchayet."

The jury, thus constituted, were directed to find a general verdict, if possible; if not, a special verdict was never refused, provided it was distinct and precise; and, perhaps, considering the irregular manner in which offences are sometimes named in the calendar, as also the errors of translation which sometimes occur in recording the description of offence in the native languages, it would be as well to encourage special verdicts: the natives understand them better, and it then remains with the judge to determine whether the particular acts of which the prisoner has been found guilty, constitute the crime of which he has been accused.

No invariable rule was observed in regard to the duration of the attendance of each jury; on this point I was guided by circumstances; but after receiving their verdict upon one trial, I rarely experienced any difficulty in persuading them to remain for the others. They had overcome their dissatisfaction at being taken away from their business or amusements; they were possibly gratified by the courtesy with which they were scrupulously treated; they had discovered that no more was required of them than they felt themselves competent to perform; and they generally agreed to my proposal that they should sit upon another trial, with an alacrity altogether inconsistent with their previous reluctance.

They are apt to regard themselves rather in the light of assistant Judges than jurymen, which tends to raise their ideas of the duty which they have to perform; and this their view of the subject has been encouraged both by their reminiscences of the punchayet and by the different methods in which Regulation VI. of 1832 has been brought into operation; some Judges, availing themselves of the assistance of "assessors," and others employing "juries." No harm has been done by their entertaining a high idea of the duties of jurymen; for if their vanity is gratified, they will the more readily consent to some trifling inconvenience. Proposing to confine the trial by jury to criminal cases for the present, I should recommend the disuse of assessors; the difference will not be great, and amongst the jurymen we shall frequently find one or more capable of affording all the assistance which could be derived from regularly appointed assessors.

Trial by jury in India is, upon the whole, favourable to the prisoner. That it should be so under the present system, is not to be wondered at; for though a Judge would willingly exercise the discretion reposed in him by clause 5, section 3, Regulation VI. of 1832, when his own opinion was in favour of the innocence of the prisoner, he would not so readily set aside the acquittal by a jury, and pass sentence upon one whom they had declared not guilty. This must, in the long-run, operate in favour of prisoners. I am inclined, moreover, to think that, even if the decision of jurors becomes final, the prisoner will still have a better chance of escape than if he were tried without one.

It will take more proof to carry conviction to a jury than to a magistrate or a Judge; such, at least, is the inference which I am disposed to draw from experience. They would refuse to believe that certain characters could commit certain acts; they would attach greater weight to that which might be expected to occur, and less to that which was sworn to have occurred; they would not unfrequently act rather as compurgators than as jurors, and would bring in a verdict of not guilty against the evidence, because they could take their oaths that the prisoner was incapable of the act of which he was accused. But these, again, are the very occasions on which we hope to derive advantage from their superior practical information; and it does not follow that the guilty has escaped with impunity, because the jury acquits a man whom the Judge would have condemned.

Their disregard of confession has, however, attracted my attention, and suggested serious reflections. We are apt to regard deliberate confession before the magistrate as positive proof, and we are satisfied with inquiring whether the party confessing was in possession of his senses at the time, and whether persuasion or menace was employed in procuring his admissions. The natives of India think differently, and receive with extreme caution every declaration injurious to the party making it. Now, as a great portion of the prisoners sentenced in this country are convicted upon their own confession, there is some ground for apprehension that when verdicts become final, the guilty will escape oftener than they do now.

It is true that their distrust of confession has appeared to me extreme; but we must not make the mistake of assuming that they are wrong; this is not the place for discussing the point; but, in defence of the opinions of those whose condition I desire to improve, I trust I shall be excused for quoting a single sentence from the Commentaries on the Laws of England :—

They (confessions) " are the weakest and most suspicious of all testimony, ever liable to be obtained by artifice, false hopes, promise of favour, and menaces, seldom remembered accurately, or reported with due precision, and incapable, in their nature, of being disproved by other negative evidence."

Some of these objections do not apply in full force to the formally-recorded confessions of India, whilst others apply still more forcibly. The sentence deserves the attention of all European criminal authorities in India; the natives already recognize the truths which it contains.

It has been observed to me, that all these objections apply to Thannah confessions, not to confessions made before the magistrate: they will apply less to the latter than to the former; but " artifice, false hopes and promises," will easily persuade a prisoner to adhere at the Sudder station to any statement which he has made in the Mofussil; " menaces," of course, would have lost their power in a great measure.

The personal experience of any one individual upon such points as these, is insufficient to conduct even himself to a definite conclusion. Before any steps are taken, the opinions of all the Mofussil judicial officers would be called for, and until they are received it will be unsafe to answer the question proposed some time back, namely, " Whether the working of the experimental law warranted the extension of the principle upon which it was framed." The following observations refer to by far the most difficult part of the subject, the practicability of extending that principle.

The importance and variety of the numerous questions which immediately suggest themselves, the knowledge of English law and Indian custom necessary to entitle any one to form an opinion upon them, and the sense which I entertain of my own insufficiency, have almost warned me from entering upon the subject; but a beginning must be had somewhere, and fancy indulges the vision, that, in recording these observations, whatever their intrinsic value may be, I am, perhaps, taking the first step towards the introduction of an improvement into the judicial administration of the country.

The first question, according to natural order, is, for what cases are juries required, or, in other words, what cases shall be tried with, and what without them ?

I propose that all trials in the Sessions Court, and all trials before a magistrate, in which he can legally pass a sentence beyond the limits prescribed by section 19, Regulation IX. of 1807, shall be tried with the assistance of a jury. I see no better division than this; it is simple, and easily understood. To extend the new mode of trial over all cases in the magistrate's cutchery would impede the transaction of business, and require too large a supply of jurors; and, on the other hand, the magistrate could not consistently exercise the functions of a criminal Judge conferred upon him by Regulation XII. of 1818, VIII. of 1828, and the like, without juries, whilst the sessions Judge was obliged by law to employ them upon all occasions. Some inconvenience might be felt in the magistrate's court; yet, " let it be again remembered," says the author already quoted, " that delays, and little inconveniences in the form of justice, are the price which all free nations must pay for their liberty in more substantial matters." We have not to deal with a free nation; but we are endeavouring to treat them as if they were free, and " we are conquering them into the enjoyment of true liberty, by insensibly putting them upon the same footing and making them fellow citizens with ourselves."

Supposing it to have been decided what cases are to be submitted to a jury, we are to inquire how that jury is to be composed. All persons residing within the jurisdiction of the Court might be declared liable to be summoned to sit on the jury, excepting the following classes :—

1st. Persons of infamous character.
2d. Persons of weak intellect.
3d. Persons of low caste.
4th. Paupers, or persons not possessing *Rs.*   per mensem, or its equivalent.
5th. Persons ignorant of the language in which the proceedings of the Court are conducted.
6th. Persons above 70 years of age.
7th. Persons under 21 years of age.
8th. Members of the Civil Service.
9th. Military men.
10th. Persons specially exempted.

And all persons, with the exception of the first seven classes above enumerated, shall be capable of sitting on juries, whether residing within the jurisdiction of the Court or not.

On the first introduction of any new system, it would be desirable to encumber it as little as possible with details, and to leave it simple and comprehensive. If we were to attempt

to

to determine those circumstances which constitute "infamy," or to enumerate the castes which are to be deemed "low," or to specify the parties to whom "exemptions" ought to be granted, we should involve ourselves in a complicated mass of details; we should incur the risk of making mistakes, and we might find that we had applied to the whole country provisions which were applicable only to particular parts of it. Much would still be left to the discretion of the executive authorities; but the Sudder Court would issue such instructions as they thought calculated to carry out the objects of the enactment, and every order passed might remain subject to the usual course of appeal. With such checks, it is reasonable to believe that no great inconvenience would be felt from the general terms of any rules which it might be thought necessary to prescribe, nor are we to forget that trial by jury has already been practically introduced, to a very great extent, without any rules at all.

It will be very difficult to supply the magistrate with proper juries, and it would be well if they could be dispensed with altogether in those Courts. I have already stated why this cannot be as regards those cases in which magistrates are criminal judges, and juries must, therefore, be provided for them. So long as the present excellent system obtains of trying a case the moment it is ready for decision, I do not see how it is possible to prevent the duty of sitting upon juries falling more heavily upon those who reside in the vicinity of the Courts, than upon those who reside at a distance. If jurors are to be brought in from all parts of the district alike, nothing less than a jury in constant attendance would meet the demands of the magistrate; for his cases are required to be taken up immediately, and there would be no time for jurors to come in from the Mofussil. Either the cases must wait, or the jurors must be kept ready. In this difficulty, no better alternative presents itself than to allow the magistrate to summon his own juries from the neighbourhood of the place in which he is holding his cutchery. This is what would take place if no rules were laid down upon the subject, and if the authority who acted as sheriff was left to procure the attendance of a certain number of respectable men, as in England. The consequence, indeed, would be, that the same individuals would be repeatedly impanneled, than which nothing can be more objectionable, except the alternative already proposed.

For the court of the sessions Judge juries might be summoned from any part of the district, as in England; I believe they are summoned from any part of the country; all that would be necessary is, that the sessions should be held periodically. A certain number of "good men, and true," might be required to attend on the 1st of every month, and to remain in attendance until all the cases in the calendar had been disposed of. At present trials are held as soon as the attendance of the prosecutor and witnesses can be procured by the magistrate; then they would all be brought on at the beginning of each month.

The inconvenience to individuals would be much felt and more complained of; but it would occur very seldom, and it is, after all, no more than every person is liable to against whom his neighbour has cause of dissatisfaction, or whose evidence is required by litigants in any of our courts. The travelling expenses and subsistence might be allowed if demanded, but I do not think it would be necessary or wise to grant any further remuneration.

In preparing the "panel," the magistrate of the district should perform the functions of a sheriff, and the writ of *venire facias* would be represented by a general precept to procure the attendance of a jury on the day fixed for holding the next ensuing sessions.

The equalization of the burthen of attendance, by summoning the jurors from all parts of the district, involves the abandonment of a position to which great importance has been attached by all the natives with whom I have conversed, namely, that the jurors should be kept in ignorance of the cases which were to come before them up to the last moment. The time of summoning the jury thus becomes a subject of consideration: in England it seems to have been thought desirable that the names of the jurors should be given to the parties in civil suits, and to the prisoners in some cases, in order that they might be "ready with their challenges;" but in India the fear is, that the jurors would be tampered with if their names were known for any space of time before the trial. The jurors who have sat with me have rarely known that they were to sit at all until the morning of the trial; their disinterestedness is thus secured; but great apprehensions have frequently been expressed to me, by the natives themselves, that the same degree of integrity could not be expected if the jury were allowed time to become acquainted with the cases out of court. For this there is no remedy, unless the sessions juries are collected, as at present; and as it has already been proposed to collect the magistrates' juries, we are placed between the horns of a dilemma; either we lay the whole burthen of attendance upon those who reside in the vicinity of the Sudder station, for the sake of securing disinterestedness, or we expose the jurors to the chance of being tampered with for the sake of imposing an equal tax upon all.

Of the two alternatives, I prefer the latter; there is something anomalous, if not unjust, in granting to the inhabitants of a particular vicinity the privilege, or in imposing upon them the duty, of deciding upon the offences of the rest of the district; and I believe that means will be found of palliating the evil of exposing jurors to temptation. If the sessions are held periodically, as suggested above, there would always be more than one case for trial, and the Judge might call on whichever he pleased, dismissing that jury as soon as they had delivered their verdict, and employing another for the next case; or, as in England, a much larger number might be impanneled than would be required to form one jury, and the names might be taken by chance: challenges, too, must be allowed, of which I shall speak presently. The danger may be lessened by these and similar means; but the time which elapses between the receipt of the summons by the juror and the trial, should be made as short as possible. It is to be hoped that in after years these precautions will be found to be superfluous.

It will not perhaps be necessary to fix any exact number as the only one of which a jury can be legally composed. A magistrate's jury might be less numerous than a judge's, not only because his cases are more trifling, but because he is supposed to require juries oftener, and, under the view of the matter taken above, because the members, being ordinarily summoned from the same neighbourhood, each individual's turn will come round more rapidly than if they were summoned from the district at large. No jury, however, should consist of less than five or six, nor of more than 12 or 13, according as odd or even numbers may be required, nor should any jury be formed without a due proportion of Mahomedans and Hindoos.

The magistrate being by law empowered to "cause attendance," there can be no fear of a trial being stopped for want of a jury; but as the process should ordinarily amount to no more than the service of a notice, parties neglecting to attend, should be liable to be fined. The fine should be realized by distraint only, and under no circumstances should the defaulter be subjected to personal imprisonment on account of non-attendance or non-payment of the forfeit. Farther, to make this new duty fall as lightly as possible on the people, any person summoned may be declared at liberty to provide a substitute, it resting with the magistrate to determine whether the substitute be fit to sit upon jury or not.

The privilege of challenging should be retained, though not exactly as it exists in England: as there are greater probability of jurors being prejudiced in India than in England, so is there the greater necessity for the preservation of this safeguard, and it is consonant with every principle of justice that these judges (for they are no less), should not be biassed against the prisoner. The magistrate will already have too much power in preparing the lists, and our little intercourse with the natives will incapacitate us from detecting the objections to any particular juror as readily as we might do in our own country. I hold it therefore highly expedient to extend to prisoners the right of challenging under certain modification.

The magistrate, acting as sheriff, must, in this country, and for the present, be assumed to be an "indifferent person," and, therefore, challenges to the array need not be allowed. It will never occur to the natives to demand such a prilvilege, and they will deem every purpose answered if they are permitted to object to individuals.

Challenges are of two kinds—

1st. Peremptory challenges.
2d. Challenges for cause.

The former of this should be allowed to the prisoner only, and to what extent may be determined hereafter. The English law allows a great many challenges, and once allowed, still more; but no such license will be required in India, where a single peremptory challenge will be an extraordinary occurrence. To the number of challenges for cause shown, there should be no limit of course, and the privilege might be extended to the prosecutor, the magistrate or judge presiding in the court in which the trial was about to be held being authorized to decide finally upon the sufficiency of the causes assigned, and either to direct the challenged juror to take his seat, or to supply his place from the names remaining on the panel, or from elsewhere. The privilege of peremptory challenges might, perhaps, be confined to the court of the sessions Judge. I am afraid of impeding the necessarily rapid proceedings of a magistrate's court; and, had it been possible, their names should have been mentioned only as the parties to whom it is proposed to confide the duty of returning the panel. They are, however, so completely criminal judges in some cases, that it is unavoidable to extend to them the rules enacted for other criminal courts.

It has been my invariable practice of late years to invite challenges from both parties. First, the jurymen themselves are called upon to declare if they have any acquaintance or connexion of any kind with the prisoner. On receiving an answer in the negative, the prosecutor is asked whether he objects to any of the jury; and, finally, the same question is put to the prisoner. In no one instance has either party availed itself of the opportunity afforded.

I do not think that any oath or solemn affirmation would influence the members of a jury. If they were base enough to betray the trust imposed on them, they would not be deterred by a preliminary appeal to the Deity; and, therefore, it seems better to give in to the prejudices of those natives who object even to solemn declarations, and to dispense with the ceremony altogether.

The treatment of jurors when selected and ready to enter upon their duties may seem a very minor point, but it is not so unimportent as it sounds. Some rules are required as to the manner in which they should be treated during the sitting, by which uniformity of practice would be ensured, and discussion anticipated. They will of course be provided with seats, and supplied with copies of the calendar in the Persian and Nagree characters; and a memorandum should, for some time to come, be placed in their hands, or read aloud to them, stating not what their duty is, for that they very well know, but in what manner they are to perform it. To an Englishman it may seem superfluous to tell a juryman that he is not to interrupt the Counsel or the Judge who is examining a witness, nor to express his half-formed opinion before the case is ended, nor to leave his seat without cause, and the like; but the ideas of the natives are drawn from their behaviour on punchayets, and there all these irregular practices are common. Their feelings would be hurt by any abrupt prohibition conveyed to them in open court, and it is but fair to tell them beforehand what we

require

require of them. Besides, the object is to induce the natives to serve cheerfully upon juries, not to force them to do so. Englishmen grumble at being compelled to attend; but they understand their own importance when they are once in the box, and they behave accordingly. My own experience leads me to believe that the natives of India, if carefully managed, will behave precisely in the same way.

Nothing can be held to be of little moment which concerns the mutual behaviour of Judge and juries, otherwise I should have passed over these, comparatively speaking, minor points. There is, however, one concession which I found myself obliged to make unwillingly—I allude to the regular practice of almost all Mahomedan jurors to retire, for the purpose of praying, without any reference to the proceedings of the court. Knowing very well that slighter causes had often persuaded them to postpone their ceremonies, I was tempted to attribute these ostentatious devotions to some motive other than pure piety; but so many objections were made, that I gave up the point, and latterly have always allowed jurors to retire to say their prayers.

Should the trial extend beyond one day, the jury must be permitted to separate, and to return on the following day, when the court opens. The objections to this are on the surface, and they apply more strongly in India than in England. There is only one reason for allowing the indulgence, and that has already been repeatedly alluded to. The duty must be made as easy and agreeable to the natives as possible, and we must do all we can to win them into the appreciation of it. They would not readily admit the necessity of remaining together all night; for, still drawing their ideas of juries from their own punchayets, they would regard themselves as assessors or assistant judges, rather than as jurors; and yet it is as jurors only that their services will be found so peculiarly valuable.

Following the regular course of a trial, we now come to the summing up of the evidence by the Judge, if such a proceeding be thought fitting or practicable. I do not think that it ought to be attempted; and I speak with a full knowledge of the great attainments of many of the Company's civil servants, when I express my fears that the generality of the Judges would hesitate to charge a jury in the Hindoostanee language. It is not an easy thing for any man to do well, whatever advantages he may have derived from education and example; and if attempted in the present state of our knowledge and practice, we should run the risk of doing more harm than good. I rarely attempt it, and when I do, my remarks do not constitute anything approaching to a "charge" (which I conceive to be a comprehensive and argumentative abstract of the whole case, accompanied by the Judge's comments upon such parts as appeared to require them), but are confined to the few isolated observations, the necessity for making which has forced itself upon me in the course of the trial. The most profound and most respectful attention has ever been paid to me upon these occasions, yet I avoid them whenever I can; for I fear lest the jury should avail themselves of the supposed opportunity of discovering my sentiments as to the guilt or innocence of the prisoner; and that should be carefully concealed from them until they become more accustomed to the independent exercise of their own judgment.

Nevertheless it is frequently very necessary that observations should be made to the jury before they retire to consider their verdict; and this will readily be allowed, without the production of instances. The best way is to make the observation at the time when the necessity for it suggests itself. The jury will understand it much more easily then than at any other time, and any little error of language will be less likely to bear upon the verdict than if it had been uttered immediately before the jury left the box.

Whatever may have been the origin of requiring unanimous verdicts from a jury, it is admitted that nothing so contrary to reason could ever be the object of direct enactment. It may have been necessary, out of a large number, to find 12 men who were satisfied with the proof adduced before sentence could be passed, or it may have had its rise in the 12 compurgators of the canon law, persons who swore that, from their knowledge of the prisoner's general character, they believed him to be innocent; certainly this state of things must have come about by slow degrees, and, monstrous as it sounds, might, like many other obscure parts of our common law, become more intelligible if we knew its history. No ages were ever so dark as to demand directly that 12 men, not agreeing in opinion, should be locked up, or fed on bread and water, till they did agree. They might be compelled to give in a unanimous verdict by some still shorter process, but beyond this they could not get without a miracle. The only method by which the present system can be reconciled with reason, is by supposing the law to mean that, unless the proof was so clear as to carry conviction to the minds of all the 12 men impanneled, a verdict should be found for the prisoner, an explanation which I believe to be unsupported by written authorities or by practice.

What attention, then, is to be paid by the court to a unanimous verdict, and what attention to verdicts in which only a majority of the jurors agree? When I first considered this subject, I entertained the idea that unanimous verdicts might be held to be final; subsequent observation has shaken that opinion, and I confess I am now afraid to go so far. The least that could be done is to require that all cases in which the Judge differs with a unanimous jury should be referred to the Nizamut Adawlut, which, after all, is merely placing the jury on the same footing, in regard to the weight to be attached to their opinion, with the Mahomedan law officers who used to sit on criminal trials. It will increase the quantity of work in the superior court, but that is foreign to the present question; and, moreover, there is great necessity that this labour should be imposed upon them, since, as the law now stands, the power of the Judge is too great. Formerly, if the Mahomedan law officer and the Judge differed, the case was necessarily referred to a higher tribunal; but

C. now, if the jury unanimously disagree with the Judge, the latter has the power to pass sentence according to his own individual opinion. The only answer to this is, that the prisoner can appeal, and if it were as easy to make the appeal as to talk about it, the answer would be sufficient.

If it would not impose too much additional labour on the Judges of the Nizamut Adawlut; who certainly ought to have "time to think," I should like to see those cases also made referrible to them in which the Mofussil Judges differ with the majority of the jury. The number of cases, to judge by my own experience, would be very few, and they might be made still fewer by authoritatively fixing the proportion which shall constitute such legal majority.

The last step in a trial is the delivery of the verdict. On the conclusion of the trial, the jury should retire, as they do in England, and should not deliver their individual opinions at once, as they are sometimes permitted to do in this country. By giving them an opportunity of discussing the matter amongst themselves, unanimity is frequently obtained; for any erroneous impression is by this means easily removed from the mind of the dissenting party, or some point which had escaped him is brought prominently forward to his notice. I fear that if called upon to deliver their sentiments one by one, without retiring, the second speaker would on some occasions adopt the opinion of the first speaker, from timidity, from the fear of standing alone. Some of the Hindoos would be peculiarly obnoxious to this weakness, which would not affect them in the same degree were they seated in a room by themselves. As the practice now obtains, juries sometimes deliver their verdict by word of mouth, and sometimes in writing. It will tend to prevent discussion at a moment when it would be very ill-timed, if they were required always to give in a written paper, more especially as the courts would sometimes be compelled to receive conflicting opinions, the verbal delivery of which would provoke conversation, and tempt the parties to support their opinions by argument. Such a proceeding might, of course, be stopped by a Judge, but it is better to prevent than to check the indecorum.

Juries, as has been already observed, should find a general verdict if possible, stating no more than that the accused was guilty or not guilty of the crime named in the calendar; and, in the event of their not being able to bring in such general verdict, they should be permitted to find a special verdict, declaring the facts which had been proved, and leaving it to the Judge to declare what offence these facts constituted, and what penalty the law attached to that offence.

Some of the changes which have been suggested in the course of these notes, would require a new law to carry them into effect; and whenever the legislature may take the propriety of such an enactment into their consideration, many subjects which have not been alluded to will demand their attention; of this class is the responsibility of juries.

The Judges in England were in the habit of interfering with the decisions of juries up to a much later period than any one would suppose who contemplates their present independence. Sir William Blackstone says, they were "fined, imprisoned, or otherwise punished for finding their verdict contrary to the direction of the Judge." Even in India we have passed the period when such contradiction could be tolerated, but still it may be necessary to establish some check to the dishonest exercise of their vast power, by the juries. There would be no occasion to provide for the setting aside of a false verdict by attaint, since the authority of the Nizamut Adawlut remains unimpaired, and is competent to remedy all such mishaps, as soon as they become known; but individual members of the jury may be declared liable to be brought to trial for wilfully and knowingly giving in a wrong verdict, in consideration of some advantage, direct or indirect, present or prospective, accruing to themselves. No one except the Government should be allowed to prosecute. No public officer should be competent to direct a prosecution in their name without the sanction of the Nizamut Adawlut, and no trial should be held elsewhere or otherwise than in the sessions court before a special jury.

There is a class of persons amenable to the criminal laws enacted by the Government of India, whose interests are deeply involved in any alteration which may be introduced into the present system. All Europeans not being British subjects, all Americans and all East Indians, are, by section 5, Regulation VI. of 1832, liable to be tried by Regulation law, and would all frequently object to be tried by a jury of Mahomedans and Hindoos. Any enactment unconditionally declaring that such persons should be tried by jury composed of persons not being Mahomedans and Hindoos would, in some districts, run the risk of stopping the trial altogether; and I see no better alternative than a proviso that in such cases the returning officer shall impannel as many jurors as possible of the same class with the prisoner, leaving it, after all, optional with him whether he will be tried by such jury as the district affords, that is, "by the country," or by the Judge alone. The number of foreigners who would come before the courts is so exceedingly small, that rules might be framed for trying them at particular stations, where there would be no difficulty in forming an European jury, and then it will be easier to legislate for the single class of East Indians who would be left. Any such subdivisions are in themselves objectionable, and should be admitted only where the necessity is imperious.

The provisions of Regulation VI. of 1832 have been very generally introduced into the North-Western Provinces. By a memorandum, for which I am indebted to the present Register of the Sudder Court, I observe that, in 1843, out of about 1,500 trials, upward of 1,000 were held under Regulation VI., and, striking out the districts of Delhie, Benares, Saugor and Kumaon, it appears that of 1,099 cases, only 109 were tried without a jury. As this has been going on for 14 years (though, perhaps, not always to the same extent) the

Nizamut

Nizamut Adawlut must be in possession of data upon which to form a judgment as to how far the Regulations have supplied the place of a criminal code. The instances in which they have been found wanting will be indicated by the number of cases referred to the Nizamut Adawlut under the proviso contained in clause 1, section 4, Regulation VI. of 1832; and if it shall appear that no such cases have been referred, the inference will be, that, as far as the experiment has been tried, the Regulations do constitute a criminal code, without there being any occasion to draw upon the Mahomedan law or the Nizamut Adawlut on account of cases not therein provided for.

I have attempted in this paper to explain the grounds upon which I hold it desirable to introduce trial by jury, or punchayet, more fully into the criminal courts of India. I have stated the result of my own experience of the working of the experimental law passed 14 years ago; and I have ventured to propose some of the arrangements and provisions which will be necessary whenever it may be determined to extend the principle of that law, or even to fix the mode of proceeding under the law as it now stands.

At one time I contemplated drafting a Regulation on the subject of these notes, and submitting it to the Nizamut Adawlut under Regulation XX. of 1793; but the number, difficulty and variety of the subjects involved, deterred me from expressing myself in the categorical language suitable to a legal enactment. A perusal of the minutes recorded previous to the promulgation of Regulation VI. of 1832, an examination of the returns made during the last 14 years to the Nizamut Adawlut, or a knowledge of the results of the experience of others, might change my opinions upon any one of the points which have been noticed. I by no means imagine that the view which I have taken must necessarily be sound, or that the opinions which I have expressed must necessarily be adhered to when their fallacy shall be made apparent.

(signed) H. Lushington,
Futtehpore, 1844. Offg Sessions Judge.

(True copy)
G. F. Edmonstone,
Register.

Agreeably to the instructions conveyed to me in question No. 4612, I have perused the above notes, written nearly ten years ago in India. The only opinion which I desire to modify is that which implies that natives should afford their aid on judicial trials exclusively as jurymen. The conviction that natives can find facts better than Europeans, a conviction in no degree weakened by subsequent experience, was the prevailing idea in my mind, and may have led to my apparently undervaluing them as assessors. The knowledge, however, which enables a native to find a fact, is precisely that which would make him useful as an assessor.

London,
6 May 1853. H. Lushington.